

March 14, 2019

VIA U.S. MAIL AND EMAIL

Mr. Misael Cabrera

Director

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Re: RID Remediation Project

Director Cabrera and Attorney General Brnovich:

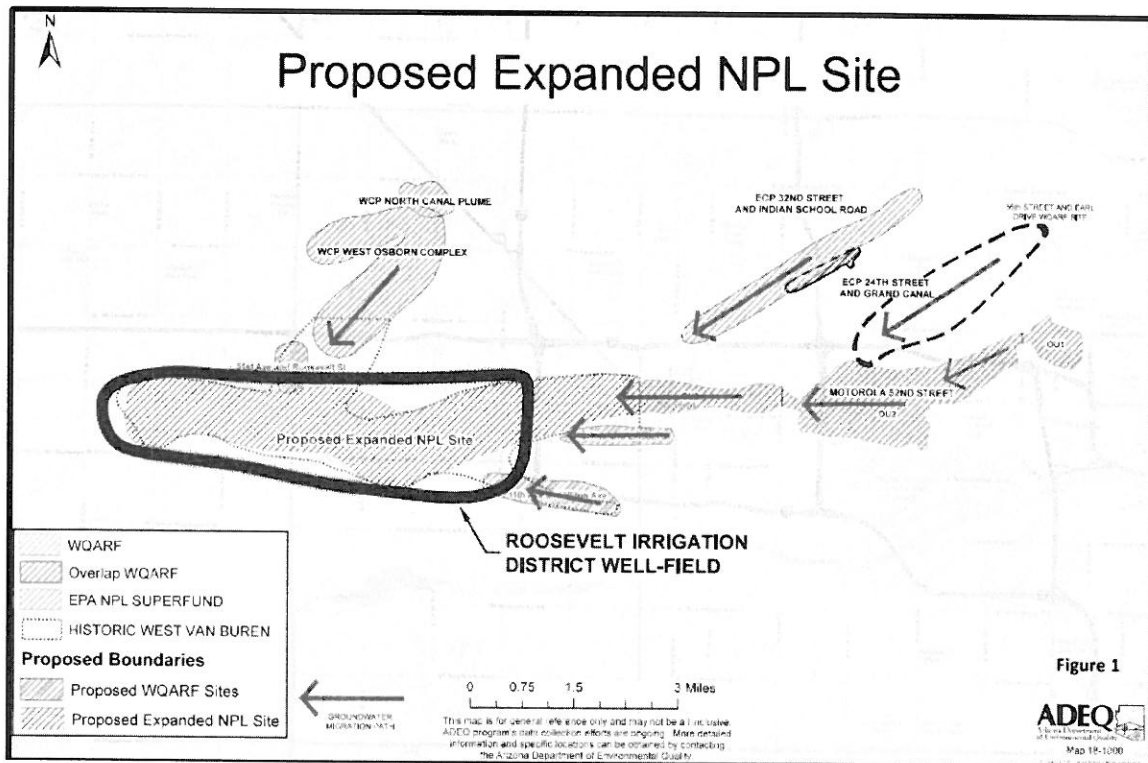
On behalf of the Roosevelt Irrigation District (RID), we wanted to followup on our March 22 and June 11, 2018 meetings and subsequent letters and conversations now that the United States Environmental Protection Agency (EPA) has responded to RID's written appeal seeking EPA support of RID's voluntary groundwater remedial actions at the West Van Buren Area (WVBA) Water Quality Assurance Revolving Fund (WQARF) Registry Site. RID appealed to EPA for support on July 19, 2018 following the request made of EPA by the Arizona Department of Environmental Quality (ADEQ) on April 24, 2018 to expedite remedial action at the WVBA WQARF Site by considering extending the westward boundary of the Motorola 52nd Street federal Superfund Site (federal M52 Site) to include portions of the WVBA impacted by groundwater contamination originating from the federal M52 Site. As ADEQ convincingly noted, EPA has been aware for over two decades that the groundwater contamination migrating from the federal M52 Site has adversely impacted the WVBA Site. This problem is so obvious that even the Operable Unit 3 (OU3) potentially responsible parties (PRPs) in the federal M52 Site acknowledge that the "presumed distal end of the M52 VOC plume terminates within the WVBA WQARF Site" and "[t]he future selection of a remedy for the WVBA area will mitigate any potential exposure to contaminated groundwater downgradient of OU3."¹

Unfortunately, it is now clear based on EPA's September 2018 letter to RID that EPA will not take timely action to address the public health and groundwater contamination problems that once again have been brought to EPA's attention. Without any consideration or discussion of ADEQ's request regarding an administrative extension of the current boundaries of the adjacent, upgradient federal M52 Site, EPA instead responded that it will take years to include the WVBA WQARF Site on the federal National Priorities List (NPL). After NPL listing, based

¹ *Final Operable Unit 3 Remedial Investigation Report, Motorola 52nd Street Superfund Site, Operable Unit 3, Phoenix, Arizona*, prepared by Environmental Resource Management, October 2016, at pages 3 and 35.

on EPA's pace at OU3 of the federal M52 Site, it may take another decade before the direct and ongoing releases of toxic pollutants into the ambient air of the local community and the ongoing migration into the WVBA WQARF Site of the toxic groundwater contamination originating from the federal M52 Site will be addressed. RID strongly disagrees with EPA's positions and analysis and has issued a reply to EPA, dated March 5, 2019, which is attached as Exhibit 1.²

The regional groundwater contamination problem must be addressed. Not only is the contaminated groundwater migrating from the federal M52 Site impacting the WVBA Site, but as evident in the following ADEQ depiction of the groundwater plumes associated with all Phoenix-area volatile organic compound (VOC) sites, groundwater contamination in the entire region is migrating to the WVBA Site.³



The groundwater contamination problem illustrated above is unlike any other in Arizona. In this region, extensive pumping of large capacity RID production wells is the dominant control on the shallow groundwater flow system. Indeed, the PRPs of the West Van Buren Working Group have noted, “[RID] pumping since the 1950s has resulted in an extensive, regional

² Although the initial reply to EPA was drafted in October 2018, we were led to believe that there would be opportunities to address the problems without the need of a formal reply. Unfortunately, no such opportunities materialized and minor tweaks were made to the original draft reply due to the passage of time.

³ Illustration included in ADEQ's April 24, 2018 letter to EPA. The figure has been modified to include the VOC plume originating from the 56th Street and Earll Drive WQARF Site, which was left off the ADEQ map, and to show the apparent groundwater flow direction associated with the converging VOC plumes. The area encompassing the RID well field in the WVBA Site is also shown.

groundwater depression that controls groundwater gradients over much of the central and northern portions of the WSRV [West Salt River Valley].”⁴ As a consequence, the RID well field has been massively impacted by VOC contamination from numerous sources and sites, with up to 26 RID wells contaminated by VOCs. And unfortunately, for an indeterminant time that may encompass 30 to 40 years or more, the VOCs in groundwater pumped by RID were and continue to be released into the ambient air within the WVBA community, exposing the local low income, minority WVBA community to toxic VOCs. Persistent and long-term inhalation exposure to toxic VOCs like trichloroethene (TCE) is a likely contributor to serious health effects and may explain, at least in part, the extremely high reported air toxics cancer risk in the area. Specifically, EPA environmental data compiled in the EJSCREEN screening and mapping tool indicate the WVBA Site ranks at the 97th percentile for potential lifetime cancer risk associated with inhalation of air toxics.⁵

The lack of any State or Federal action to address the largest groundwater contamination site in Arizona is untenable to RID and should be unacceptable to the State from a public and environmental justice perspective. After all, ADEQ’s stated mission is to “**protect and enhance public health and ... to prevent pollution of the air, water, and land, and to ensure cleanup when pollution occurs** (emphasis added).”⁶ Apart from RID’s voluntary efforts to undertake remediation under ADEQ-approved remedial actions, remediation to protect public health and prevent environmental contamination is not occurring at the WVBA Site. On the other hand, the State of Arizona and EPA have initiated cleanups involving the implementation of large-scale groundwater pump and treat (P&T) remedial actions between 15 and 30 years ago at the other major Arizona contaminated sites. The impoverished, minority population within the WVBA Site has had to live with direct exposure to toxic VOCs and groundwater contamination affecting their community while regulators moved forward decades ago to implement remedial actions to address environmental degradation at the other major sites in Arizona, including the adjacent, upgradient federal M52 region of the same plume connected to the WVBA Site. The near total disregard for the WVBA is typified by the fact that the State of Arizona has allocated only \$80,000 of funds from the projected FY2019 WQARF budget to address the WVBA Site.⁷ This total amounts to 0.6 percent of the proposed \$13.3 million WQARF budget allocated to all sites. Oddly, the West Osborn Complex WQARF Site is budgeted to receive \$1.24 million in WQARF funding even though the entire VOC plume outside of the source area is migrating with prevailing groundwater flow toward the WVBA Site.

Consequently, RID asserts the State of Arizona must now step up and fulfill its responsibilities and legal mandate to protect public health, prevent further environmental degradation and cleanup groundwater contamination within the WVBA WQARF Site. This problem can no longer be ignored or dismissed. Given EPA’s unwillingness to take any timely

⁴ *Final Feasibility Study Report, West Van Buren WQARF Site, Phoenix, Arizona*, prepared by Haley & Aldrich, December 2014, Site Conceptual Model, at A-9.

⁵ The EJSCREEN result indicates that only 3% of statewide residents have a higher cancer risk than the average resident of the WVBA Site. See EJSCREEN data on presentation to EPA, included as Attachment A in Exhibit 1.

⁶ *2018 WQARF Annual Report* at 2.

⁷ *Id.* at 31.

action, the WVBA WQARF Site remains an Arizona WQARF Site subject to the State of Arizona WQARF Program requirements, procedures and standards under Arizona law for the foreseeable future. As a result, the responsibility falls on the State of Arizona to actively address the ongoing risks to public health, welfare and the environment within the WVBA WQARF Site. Time is of the essence for State action given that the existing RID remediation funds are depleting and further delay is inexcusable, especially when the State of Arizona declared back in February 2017 that “the State of Arizona will no longer accept delays [to groundwater remediation] at the [WVBA WQARF] Site.”

Despite the State’s call against any further delay in remediation at the WVBA WQARF Site in February 2017, the State of Arizona has failed and/or refused to take the necessary additional administrative actions to enable full implementation, continued operation and funding of the RID remedial actions that have been formally approved by the ADEQ and directly address the risks to public health, welfare and the environment in the WVBA WQARF Site in compliance with all applicable Arizona laws and WQARF Program requirements. Now that EPA has clearly stated its inability to timely address the WVBA WQARF Site and the recent Arizona primary and general elections are over, we again seek the State of Arizona’s immediate assistance, consistent with its February 2017 declaration and applicable legal obligations, to avoid further delay in the full implementation, continued operation and funding of the ADEQ-approved RID groundwater remedial action in the WVBA WQARF Site.

We do not understand why RID has been denied any meeting with the Governor when RID is a victim of the groundwater contamination, has volunteered to mitigate public health and environmental risks and is the only party that has expended substantial funds and resources to address the massive groundwater contamination in the WVBA WQARF Site. In fact, RID has arranged private funding through a public-private-partnership to fully implement the ADEQ-approved RID groundwater remedial action and build additional infrastructure to maximize the beneficial use of the treated groundwater as required by state law,⁸ and to encourage future economic growth and development in the State. Although a meeting was held on March 22, 2018 with the Governor’s staff, ADEQ, the Arizona Department of Water Resources (ADWR) and the Attorney General’s Office, no response has ever been provided to the materials, options and proposals presented by RID at the meeting.

For more than thirty (30) years, the State of Arizona has identified and known of groundwater contamination within the WVBA WQARF Site that violates applicable water quality standards and presents an imminent and substantial danger to public health, welfare and the environment. In response to the groundwater contamination, which contaminated RID’s water supply wells and caused the release of toxic pollutants into the ambient air of the local community within the WVBA WQARF Site, RID voluntarily developed and has partially implemented groundwater remedial actions over the last eight (8) years that ADEQ formally approved in 2010, 2013, 2014, 2015 and 2016. Additionally, a federal court has determined

⁸ See A.R.S. § 49-282.06.A.2.

these ADEQ-approved remedial actions comply with Arizona's applicable laws as well as substantially complying with the federal National Contingency Plan (NCP).⁹

For over a year now, and again during the March 22, 2018 meeting, RID has presented the State of Arizona with multiple options to avoid further delay in the full implementation, continued operation and funding of the ADEQ-approved and NCP-compliant RID groundwater remedial action for the WVBA WQARF Site. Those options included: (i) State issuance of a Conditional Poor Quality Groundwater Withdrawal Permit (PQGWP) to avoid Arizona taxpayer funding of the ADEQ-approved RID groundwater remedial action, (ii) Arizona taxpayer partial funding of the ADEQ-approved RID groundwater remedial action under the WQARF program as required pursuant to Arizona law,¹⁰ (iii) State support for EPA's administrative oversight of the ADEQ-approved and NCP-compliant RID groundwater remedial action as an interim CERCLA response action to avoid federal taxpayer funding, or (iv) enforcement actions by ADEQ or the Attorney General's Office to compel the legally responsible parties and state regulatory agencies to comply with the requirements and obligations of the WQARF Program and address the ongoing risks to public health, welfare and the environment and/or to seek appropriate civil and criminal penalties for ongoing violations of the aquifer water quality standards as provided under Arizona law.¹¹

Inexplicably, RID has never received a response from the Governor's Office on those options. Instead, actions have been taken by the State and the Attorney General's Office in the meantime that raise additional questions on why the State fails to act and continues to delay active remediation and/or funding needed at the WVBA WQARF Site. This letter will outline again the many potential options available to the State of Arizona to avoid further delay in the full implementation, continued operation and funding of the ADEQ-approved RID groundwater remedial action for the WVBA WQARF Site, to comply with the State's legal obligations to fund "orphan shares" and issue permits to facilitate the prompt conduct of ADEQ-approved remedial actions, to address the imminent and substantial danger to public health, welfare and the environment presented by the groundwater contamination in the WVBA WQARF Site and to ensure compliance with all applicable water quality and remedial action standards.

A. Available Options to Avoid Further Delay and to Implement the ADEQ-Approved RID Remedial Action

(i) State Issuance of a Conditional PQGWP

The full implementation and private funding of the ADEQ-approved and NCP-compliant RID groundwater remedial action has been delayed solely by the State of Arizona's refusal to issue a PQGWP that is mandated by statute to be issued, and that routinely and consistently has

⁹ *RID v. SRP*, No. 2:10-cv-00290, Dkt. 1396, "Order: (1) Denying Motion for Summary Judgment re: NCP Compliance; (2) Granting Cross-Motion for Summary Judgment re: NCP Compliance; and (3) Overruling Objections to Additional Fact Statements," 28, 13 (D. Ariz. filed March 15, 2017).

¹⁰ A.R.S. § 49-282.E.2(e). See discussion *infra*.

¹¹ See A.R.S. §§ 49-262, 49-263 and 49-287.

been issued for over thirty (30) years for similar government-approved groundwater pump and treat remedial actions in Arizona.

Pursuant to ARS § 49-290.01.A, “the department of water resources [ADWR] shall expedite the processing and issuance of permits, approvals or authorizations to facilitate the prompt conduct of [ADEQ] approved remedial actions.” Accordingly, over the last thirty (30) years since the creation of ADEQ and the WQARF remediation program, ADWR on behalf of the State of Arizona routinely and consistently has issued PQGWPs to authorize the necessary withdrawal of contaminated groundwater pursuant to ADEQ-approved groundwater pump and treat remedial actions until the applicable Arizona aquifer water quality standards (*i.e.*, the federal drinking water quality Maximum Contaminant Levels under the federal Safe Drinking Water Act)¹² are achieved, regardless of the end use of the remediated water (*e.g.*, for irrigation use, municipal use or discharge to a wastewater system). In fact, the issuance of this administrative groundwater withdrawal permit to facilitate ADEQ-approved pump and treat remedial actions is so routine that ADWR has issued a PQGWP even before ADEQ had approved a remedial action, conditioning the PQGWP on ADEQ’s approval.¹³ Nevertheless, the State of Arizona has unlawfully refused to issue a PQGWP “to facilitate the prompt conduct of [ADEQ] approved remedial actions” at the WVBA WQARF Site as required by statute and the State’s 30-year custom and practice. Instead, the State of Arizona has attempted to impose unlawful conditions and apply unlawful interpretations to avoid the issuance of a PQGWP,¹⁴ apparently due to political influence and improper interference from parties legally responsible for the contamination.

The State of Arizona through its ADWR Director in June 2017 tried to justify its failure to issue a PQGWP by suggesting that a PQGWP may not be necessary given that RID already possesses existing water rights to withdraw and transport water from the WVBA WQARF Site, which could be relied upon by RID as an alternative to a PQGWP to fully implement the ADEQ-approved RID groundwater remedial action. Yet the same ADWR Director unilaterally revoked prior ADWR regulatory determinations to undermine and put into question the reliability of the

¹² A.R.S. §49-223.A; A.A.C. R18-11-406. In addition to the existing *numeric* drinking water aquifer water quality standards, Arizona law requires compliance with *narrative* aquifer water quality standards to provide a safety net by ensuring protection of public health and the environment if new toxicological data determines that the existing *numeric* drinking water aquifer water quality standard for a contaminant (like TCE) may no longer be adequately protective. The *narrative* aquifer water quality standards prohibit a pollutant to be present in any “concentration which endangers human health” or “impairs existing or reasonably foreseeable uses of water in any aquifer.” A.A.C. R18-11-405A. and C.

¹³ At the 56th Street and Earll Drive WQARF Site, ADWR issued a PQGWP effective July 15, 2010 (in the same year ADEQ formally approved RID’s Early Response Action for the WVBA WQARF Site) “in anticipation of the early response action (ERA) at the site and the need to pump groundwater from extraction wells and developing the groundwater treatment system.” Clear Creek Assoc., Remedial Investigation Report, 56th Street and Earll Drive WQARF Site, 17 (2018). The PQGWP was issued nearly a year before a party entered into an agreement with ADEQ in 2011 to “design and implement an ERA.” https://legacy.azdeq.gov/envirom/waste/sps/56th_Street_Earll_Drive.html Treatment of the extracted groundwater to the applicable drinking water quality standards is required, despite the irrigation end use of the remediated groundwater.

¹⁴ See Attachment F in Exhibit 1.

same existing RID water rights. By previous written correspondence in 2011 and 2013 from ADWR, the State of Arizona informed RID that “the Department [of Water Resources] concurs that RID has the ability to deliver the remediated groundwater to non-irrigation customers within its service area [b]ecause RID ... has the [water] right to withdraw and transport groundwater to landowners” and “the duration of [certain private-party] agreements would not affect the legal availability of the groundwater.”¹⁵ In short, ADWR previously in 2011 and 2013 had confirmed that RID has a water right that allows RID to withdraw and transport the contaminated groundwater in the WVBA WQARF Site as required under the ADEQ-approved RID groundwater pump and treat remedial action.

However, in 2015, despite these prior written ADWR regulatory determinations upon which RID has relied and the fact that an existing water right has not prohibited ADWR’s routine issuance of PQGWPs to conduct similar groundwater remediations in the past¹⁶, the new ADWR Director, due to the apparent political influence of certain legally responsible polluting parties, unilaterally questioned the reliability of such prior ADWR determinations confirming RID’s existing water rights. Even when ADWR staff thereafter drafted numerous written clarifications further supporting ADWR’s 2013 written confirmation of RID’s water rights, the new ADWR Director granted unlawful veto authority over the issuance of those clarifications to a party legally responsible for the contamination in the WVBA WQARF Site.¹⁷ By refusing to routinely and expeditiously issuing the PQGWP as mandated by statute and requested by RID and, at the same time, taking unilateral action to revoke prior regulatory determinations confirming RID’s water rights, ADWR on behalf of the State of Arizona is solely responsible for the continued delay in the full implementation and funding of the ADEQ-approved RID groundwater remedial action in the WVBA WQARF Site and the continued uncontrolled release of toxic VOCs into the ambient air of the local WVBA community.

As outlined and proposed in the presentation provided to the Governor’s Office on March 22, 2018, the issuance of a Conditional PQGWP would avoid any further delay in addressing the groundwater contamination caused by ADWR’s inconsistent and, frankly, unlawful positions and actions, and would comply with ADWR’s statutory mandate in A.R.S. § 49-290.01.A “to expedite the processing and issuance of permits ... to facilitate the prompt conduct of [ADEQ] approved remedial actions” and ADWR’s 30-year custom and practice of routinely issuing PQGWPs to implement government-approved groundwater pump and treat remedial actions. As previously explained on many occasions, the Conditional PQGWP would be effective only if and when RID no longer possessed an independent water right. The issuance of such a Conditional PQGWP will enable timely financial assistance through a public-private partnership to privately fund the full implementation and continued operation of the ADEQ-approved RID remedial action under the jurisdiction and oversight of ADEQ and avoid Arizona

¹⁵ See attached ADWR letters in Exhibit 2. ADWR’s written legal determinations of RID’s independent water right are consistent with the sworn statement of a relevant PRP despite current efforts to influence ADWR to revoke such determinations. See Attachment I in Exhibit 1.

¹⁶ ADWR issued SRP a PQGWP in order to perform an ERA to protect an SRP well despite SRP holding a service area water right.

¹⁷ See Attachment H in Exhibit 1. See ADWR email in Exhibit 2.

taxpayers having to pay any “orphan share” portion of the contamination caused by third-party polluters, as would otherwise be required under the WQARF Program.

(ii) Arizona Taxpayer Partial Funding of ADEQ-Approved RID Remedial Action with WQARF funds

During the last eight (8) years since ADEQ first formally approved RID’s Early Response Action, the State of Arizona has provided only limited WQARF funds to implement and operate the ADEQ-approved RID remedial action at the State’s largest WQARF Site. ADEQ’s explanation for the lack of financial support was “because competing State-wide budget priorities have resulted in the continued underfunding of WQARF.”¹⁸ While that explanation was true for the first five (5) years of RID’s active groundwater remediation at the WVBA WQARF Site, the Arizona legislature has authorized full funding of the WQARF program the last few years and for the current fiscal year. Irrespective of the actual or perceived lack of WQARF funds, the State of Arizona more recently requested the key stakeholders to expeditiously develop a “remedial action plan that is comprehensive and covers all activities necessary” for a regional groundwater remedy at the WVBA WQARF Site.¹⁹ In fact, ADEQ, on behalf of the State of Arizona, declared in February 2017 that “notwithstanding previous communications, the State of Arizona will no longer accept delays at the West Van Buren Water Quality Assurance Revolving Fund Site.”²⁰ Inexplicably and despite the State’s February 2017 declaration against any further delays, \$0 from the WQARF funds were projected for the WVBA WQARF Site for the FY2018 budget,²¹ resulting in continued State inaction and further delay to the full implementation, continued operation and funding of the ADEQ-approved RID remedial action in spite of the federal court’s admonishment to Arizona’s public entities for their failure to act.²²

The lack of WQARF funding over the years and the virtual absence of any WQARF funding for the future is inexcusable. The groundwater contamination in the WVBA WQARF Site has been studied by ADEQ for over thirty (30) years, and ADEQ has documented groundwater contamination on a massive scale that directly impacts numerous RID operating water supply wells and is being released into the ambient air and exposing the local WVBA community to toxic pollutants. The WVBA WQARF Site is the largest and most expensive contamination site on the WQARF Registry in Arizona. Moreover, groundwater contamination from the adjacent federal M52 CERCLA Site and other WQARF sites has impacted and will

¹⁸ ADEQ approval of RID’s Feasibility Study Report (April 2015). *See* Attachment E in Exhibit 1.

¹⁹ ADEQ letter to WVBA Interested Parties, February 10, 2017. *See* Exhibit 3.

²⁰ *Id.*

²¹ ADEQ, WQARF FY17 Annual Report, 35 (2017). In fact, minimal WQARF funds have been projected for the last four years to address the largest WQARF site in Arizona: \$25,000 (FY16), \$10,000 (FY17), \$80,000 (FY19).

²² The federal court sharply criticized the lack of remedial action by Arizona’s public entities. Specifically, the federal judge stated: “It ... astounds me, to be honest with you, as to why the public entities here didn’t step up more forcefully on all bases to do something about what is admittedly a very serious problem. I don’t think anybody disagrees, or if they do, I don’t know on what basis they could possibly suggest that there aren’t plumes of very deadly carcinogenic chemicals floating around underneath the city of Phoenix, Arizona.” *Reporter’s Transcript of Proceedings (Motion Hearing)* at page 38, lines 14-21, *RID v. SRP*, No. CV-10-0920 (D. Ariz. Feb. 28, 2017)..

continue to migrate to the WVBA Site for the long-term future. The WVBA WQARF Site is the key to cleaning up regional groundwater contamination in the greater Phoenix area, yet the State agencies and EPA have not taken any substantive remedial action to address the problem.

In 2014, ADEQ prepared an internal study “to estimate the potential future costs that may be incurred by the State of Arizona’s Water Quality Assurance Revolving Fund.”²³ In “estimating the total cost to the WQARF program,” ADEQ’s 2014 report and its recent 2017 update assumed (i) “the primary remedial objective considered for each site was to allow for the present and reasonably foreseeable use of all contaminated media,” (ii) costs should be limited only to thirty (30) years, (iii) the “WQARF program may become financially responsible for the site at any time, regardless of previous actions,” and (iv) “standard remedial technologies, such as pump and treat for groundwater plume containment, were chosen.”²⁴ In determining what remedial actions would be necessary, the “project manager and other ADEQ staff experience, along with examples from similar sites, were used to determine the probable course of action” and “all inputs were chosen based on their ability to meet the site’s remedial objectives and to utilize the most cost-effective methods wherever possible.”²⁵ The WVBA WQARF Site was determined by ADEQ to be the most expensive WQARF cleanup at \$139,527,680. It should be noted that the pump and treatment of RID’s water supply wells, consistent with the ADEQ-approved RID Modified Early Response Action, was independently selected by ADEQ as the “probable course of action” to achieve the primary remedial objectives established by ADEQ for the WVBA WQARF Site.

Under the WQARF program, the State of Arizona has a statutory obligation to fund the “orphan shares”²⁶ at the WVBA WQARF Site from the available WQARF funds.²⁷ ADEQ has informed multiple parties at multiple times of its ongoing liability allocation process for the WVBA WQARF Site that would establish and quantify ADEQ’s “orphan share” financial liability, including ADEQ’s public acknowledgment in June 2017 that the State of Arizona’s “orphan share” was then estimated to be at least 10-15%. Many PRPs have argued that the State of Arizona’s “orphan share” is greater than 50%, especially since the WQARF Program is statutorily obligated also to fund a 25% discount to any PRP who timely pays its allocated share.²⁸ In fact, the PRPs’ estimate may be more accurate given ADEQ’s more recently

²³ ADEQ, *Evaluation of Potential Future Costs at Arizona Superfund Sites*, 1 (January 2014) (also often referred to as the RACER Report). See excerpts in Exhibit 4.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Pursuant to A.R.S. § 49-281(10), “orphan shares” means the shares of the cost of a remedial action that are allocated to an identified person who is determined to be a responsible party and that are not paid or otherwise satisfied by that responsible party due to any of the following: (a) The party cannot be located or no longer exists; (b) The party has entered into a qualified business settlement pursuant to this article; (c) The party has entered into a settlement pursuant to this article for an amount that is less than its allocated share; (d) The director has determined that the share allocated to the party is uncollectible.

²⁷ Pursuant to A.R.S. § 49-282.E.2.e, “monies from the water quality assurance revolving fund shall be used for the following purposes: ... “Funding orphan shares.” Even ADEQ’s 2014 RACER report acknowledges that “WQARF funds are used, in part, to ... take remedial actions; and fund orphan shares ([A.R.S.] § 49-282(E)(2)).”

²⁸ Pursuant to A.R.S. § 49-287.05, ADEQ “shall notify each person that has been determined to be liable under this article of the following: ... 9. An offer to settle the person’s liability ... if the person agrees to pay seventy-five

estimated 61% “orphan share” at all WQARF sites.²⁹ The higher “orphan share” calculation also is consistent with the former Brewer administration’s authorization for ADEQ to issue a written settlement offer for the WQARF Program to assume 50% of the remedial action costs for the WVBA WQARF Site.³⁰ RID has offered the State of Arizona alternative options to avoid its statutory financial liability for any and all “orphan shares” contributing to contamination in the WVBA WQARF Site. Nevertheless, given the recent full funding of the WQARF program by the legislature, RID does not understand why the State of Arizona would refuse to provide at least the 10-15% “orphan share,” which if paid, could enable full implementation and continued operation of the ADEQ-approved and Arizona law-compliant RID remedial action at the WVBA WQARF Site and achieve containment of the groundwater plume³¹ and all of the remedial objectives specifically established by ADEQ for the WVBA WQARF Site as required by Arizona law.³²

To date, we have not heard any response or explanation from the State of Arizona for failing to fund the “orphan shares” for the WVBA WQARF Site. Similarly, we have not heard any explanation from the Attorney General’s Office regarding its comments at the June 11, 2018 meeting that the State of Arizona may delay full implementation, continued operation and funding of ADEQ’s approved RID remedial action because the statutory word “*shall*” may be interpreted not to mean “*shall*.” As noted in our follow-up letter to Arizona Assistant Attorneys General Curtis Cox and Shilpa Hunter-Patel on July 17, 2018, such a position is incredulous and contrary to the spirit and express language of the existing WQARF Program³³ and violates Governor Ducey’s reliance on the plain and common meaning of words.³⁴

If the State of Arizona continues to refuse to issue a Conditional PQGWP that would enable private funding of the ADEQ-approved RID groundwater remedial action, the State of Arizona should pay for all the “orphan share” contributions to the contamination within or migrating into the WVBA WQARF Site as mandated by Arizona law. Even the minimal “orphan share” estimate by ADEQ could fund the full implementation and continued operation of the ADEQ-approved RID groundwater remedial action to address the imminent and

percent of the share of remedial action costs allocated to the person by the department.” The 25% discount becomes “orphan shares” pursuant to A.R.S. § 49-281.10.c.

²⁹ Pursuant to ADEQ’s WQARF FY17 Annual Report, “based on current site numbers, WQARF’s orphan share is estimated at nearly 61 percent or \$262 million” for all sites.

³⁰ See Exhibit 5.

³¹ See A.R.S. § 49-282.06.A.1 and A.2. Without implementation of the ADEQ-approved RID groundwater remedial action, there is no containment of the WVBA contaminant plume. In fact, ADEQ’s website states that “ADEQ is in the process of sampling the far western toe of the groundwater plume for additional plume definition and confirmation of containment.” <https://azdeq.gov/node/754>

³² See A.A.C. R18-16-406.I and 407.E.

³³ Pursuant to the 1997 WQARF reform legislation, the liability provisions were modified from joint and several liability to several liability because ADEQ was obligated to cover “orphan shares” from the WQARF fund.

³⁴ In the 2015 State of the State address, Governor Ducey encouraged “Attorney General Brnovich: Dust off your dictionary and help us out here. The words of the statute are clear. ‘And’ means ‘and,’ ‘Or’ means ‘or.’” Sadly, it has come to our attention that other statutorily mandated WQARF remedial action criteria may fall victim to the Attorney General’s interpretation that “shall” may now be interpreted “not” to mean “shall.”

substantial danger to public health, welfare and the environment at Arizona's largest WQARF site.

(iii) State Support for EPA's Administrative Oversight of the ADEQ-Approved RID Remedial Action as an Interim CERCLA Response Action

On behalf of the State of Arizona, ADEQ informed interested parties in February 2017 that if there was further delay beyond December 31, 2017, "the State of Arizona will request that the United States Environmental Protection Agency evaluate the WVB Site for inclusion on the National Priorities List." ADEQ requested EPA's evaluation on April 24, 2018. In its April 24, 2018 letter, ADEQ requested EPA first to evaluate whether EPA could simply extend the current boundaries of the federal M52 Site administratively to include most of the WVBA WQARF Site, similar to what EPA did when it extended the federal M52 Site boundaries to previously include the East Washington WQARF Site, which currently constitutes OU2 and OU3 of the federal M52 Site. Alternatively, ADEQ requested evaluation of placing the WVBA WQARF Site on the NPL. Inexplicably, in EPA's September 2018 letter, EPA only discussed inclusion of the WVBA WQARF Site on the federal NPL. As such, EPA explained it would take years for NPL listing and, thereafter, based on the timeline at the upgradient OU3 area, it would likely be another decade before EPA would take any CERCLA response action to address the groundwater contamination and releases of toxic VOCs into the ambient air of the local community within the WVBA WQARF Site. Although EPA's September 2018 response conflicts with EPA's CERCLA statutory authority and prior practice in Arizona, as documented in RID's March 5, 2019 letter to EPA, EPA no longer appears to be a viable timely option to avoid further delay in addressing the groundwater contamination and the public health, welfare and environmental risks at the WVBA WQARF Site. The State of Arizona needs now to look for viable State and private sector solutions.

(iv) Enforcement Action by ADEQ and/or Attorney General's Office to Protect Public Health, Welfare and the Environment from Toxic Releases and Migration of Groundwater Contamination

Another option was discussed with the Attorney General's Office in our July 17, 2018 letter. State law authorizes that the Attorney General, independently and/or with the ADEQ Director, may and should pursuant to A.R.S. §§ 49-262, 49-263 and 49-287 pursue a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief, including civil and criminal penalties, against state regulatory agencies and/or the legally responsible polluting parties for violations of applicable WQARF statutes, rules and water quality standards that ADEQ already has documented and determined to "present an imminent and substantial endangerment to public health and the environment." In fact, in an effort to expedite remediation at another WQARF Site, ADEQ and the Attorney General's Office have determined that "[b]y its very nature, 'the release of a hazardous substance may present an imminent and substantial danger to the public health or welfare or the environment.'"³⁵ Additionally, ADEQ

³⁵ See Exhibit 6 for State of Arizona's Proposed Finding of Fact and Conclusions of Law in *State of Arizona v. Palo Verde Investments, et. al*/ (filed on October 26, 2018).

and the Attorney General's Office have determined the "fact that all aquifers are designated as drinking water sources fulfills the potential danger to public health or welfare options ... [and] the environment option ... is also satisfied merely by the release of a hazardous substance and by the movement and spread of that released hazardous substance into the environment."³⁶

Again, neither ADEQ nor the Attorney General's Office has explained why the enforcement authorities provided by statute have not been utilized and pursued by the State of Arizona to avoid any continued delay in addressing the ongoing releases of toxic VOCs from the contaminated groundwater into the ambient air of the local WVBA community and the ongoing migration and contamination of RID's water supply wells and additional groundwater resources within the WVBA WQARF Site.

B. The State of Arizona Continues to Unlawfully Treat the WVBA WQARF Site and the ADEQ-approved RID Remedial Action Differently from the Other Cleanup Sites in Arizona

As described above and contrary to its February 2017 declaration that "the State of Arizona will no longer accept delays [to groundwater remediation] at the [WVBA WQARF] Site," the State of Arizona is solely responsible for refusing to routinely issue a PQGWP as required by statute and for unilaterally revoking prior regulatory determinations that would enable full implementation, operation and funding of the ADEQ-approved RID groundwater remedial action. As a result, the State of Arizona is treating the WVBA WQARF Site and the ADEQ-approved RID remedial action unlawfully different from the other cleanup sites in Arizona.

Also noted above, ADEQ and the Attorney General's Office are on record declaring to a court regarding a new WQARF Site in Arizona that because all aquifers in Arizona are statutorily designated as a drinking water source, any hazardous substance release to an aquifer "may present an imminent and substantial endangerment to public health or welfare or the environment."³⁷ However, despite ADEQ's determination that the ADEQ-approved RID groundwater remedial action in the WVBA WQARF Site is "in response to a release or threat of a release of a hazardous substance or pollutants that presents an immediate and substantial endangerment to the public health or the environment," the State of Arizona has not acted to address this "imminent and substantial endangerment"³⁸ as authorized by the WQARF Program.³⁹ In fact, the WVBA WQARF Site is the only known site in Arizona where an active groundwater remedial action has not been taken by a regulatory agency (ADEQ or EPA) to prevent direct and ongoing releases and public exposure to contaminated groundwater containing toxic VOCs above Maximum Contaminant Levels (MCLs) to ensure protection of public health, welfare and the environment as required by applicable Arizona and federal laws.

³⁶ *Id.*

³⁷ *Id.*

³⁸ See ADEQ approved WQARF reimbursements in 2013, 2014 and 2015 pursuant to A.R.S. §49-282.E.11 in Attachment C in Exhibit 1. See also Agreement to Conduct Work between ADEQ and RID, dated October 8, 2009.

³⁹ See A.R.S. §49-287.

The State of Arizona also inexplicably has failed to identify the WVBA WQARF Site as a priority site for active remediation despite the WVBA WQARF Site being the largest contamination site with the highest potential financial liability for the State of Arizona. Although ADEQ has recently developed a KOUI program to identify “sites with Known,⁴⁰ Ongoing⁴¹ and Unauthorized⁴² Impacts⁴³ to Human Health and the Environment” for agency action, the WVBA WQARF Site has not been included. The WVBA WQARF Site is absent from the KOUI list despite the State of Arizona having collected data and documented that releases of toxic VOCs have impacted the groundwater above the applicable aquifer water quality standards and are being released into the ambient air of the local community within the WVBA WQARF Site at levels exceeding federal public health guidelines, that the WVBA groundwater has and continues to be significantly contaminated by toxic pollutants migrating from the adjacent, upgradient federal M52 Site and the West Central Phoenix WQARF Site, and that the groundwater contamination in the WVBA WQARF Site is migrating and spreading and may not be contained.⁴⁴

Additionally, the State of Arizona has refused to contribute WQARF funds for the full implementation and operation of the ADEQ-approved RID groundwater remedial action at the WVBA WQARF Site that is addressing contamination from “orphan shares,”⁴⁵ despite the WQARF Program having received full funding from the Arizona legislature for the last several years. Instead, the State of Arizona is spending significant WQARF funds annually at dramatically smaller-size sites. For example, only \$80,000 from the projected FY2019 WQARF budget is allocated to the WVBA WQARF Site (the largest groundwater contamination site in Arizona), compared to \$543,000 at the WCP North Canal WQARF Site, \$550,000 at the 7th Ave and Bethany WQARF site and \$1,240,000 at the WOC WQARF site in Phoenix. Additionally, in the June 11, 2018 meeting, the Attorney General’s Office without explanation indicated that the State of Arizona may not fulfill its obligation as mandated by Arizona law to fund the “orphan shares” at the WVBA WQARF Site, all to the detriment of public health, welfare and the environment.

Furthermore, ADWR on behalf of the State of Arizona has refused to “expedite the processing and issuance of permits [*i.e.*, the PQGWP], approvals or authorizations to facilitate the prompt conduct of [the ADEQ-]approved [RID] remedial actions” at the WVBA WQARF

⁴⁰ ADEQ has defined “Known” as “empirical data showing an impact to human health or the environment.”

⁴¹ ADEQ has defined “Ongoing” as “continuing health impacts; environmental impacts are either spreading, being added to, or getting worse and cannot be resolved within 6 months.”

⁴² ADEQ has defined “Unauthorized” as “impact exceeding a regulatory standard.”

⁴³ ADEQ has defined “Impact” as “not a risk, [but] an impact to human health or the environment.”

⁴⁴ The WVBA WQARF Site would not qualify for the KOUI priorities if the ADEQ-approved RID groundwater remedial action was being implemented; however, an approved but unfunded remedial action does not protect the public health, welfare or the environment.

⁴⁵ A.R.S. § 49-281.10 defines “orphan share” as “the shares of the cost of a remedial action that are allocated to an identified person who is determined to be a responsible party and that are not paid or otherwise satisfied by that responsible party due to any of the following: (a) The party cannot be located or no longer exists; (b) The party has entered into a qualified business settlement pursuant to this article; (c) The party has entered into a settlement pursuant to this article for an amount that is less than its allocated share; or (d) The director has determined that the share allocated to the party is uncollectible.

Mr. Misael Cabrera
Mark Brnovich, Esq.
March 14, 2019
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Site as mandated by Arizona law⁴⁶ and has been ADWR's custom and practice over the last thirty (30) years to comply with the mandatory WQARF Program remedial action criteria in A.R.S. §49-282.06. In fact, the State of Arizona now has indicated that it will not approve any groundwater remedial action for the WVBA WQARF Site that requires a PQGWP, in contradiction of ADEQ's prior approvals of groundwater pump and treat remedial actions for the WVBA WQARF Site.⁴⁷ Such actions by the State of Arizona violate applicable Arizona law that mandates the prompt conduct of approved remedial actions needed to protect public health welfare and the environment. Additionally, failure by the State of Arizona to pump and treat the contaminated groundwater in the WVBA WQARF Site to address water supply wells contaminated above applicable water quality standards and achieve containment of the largest groundwater plume violates numerous WQARF Program remedial action statutory requirements.⁴⁸ To our knowledge, the WVBA WQARF Site is the only known WQARF site where the State of Arizona has failed to meet its mandatory remediation requirements.

Conclusion

We therefore again ask for immediate meetings with the Governor and the Attorney General to discuss the positions outlined in EPA's September 2018 letter, the lack of any timely assistance from the EPA and, therefore, the State of Arizona's responsibilities under Arizona law to promptly address the direct and ongoing public health and environmental risks associated with the toxic VOCs that are being released into the local WVBA community and are continuing to migrate and contaminate RID's water supply wells and additional groundwater resources. Time is of the essence for State action given existing RID remediation funds are depleting and the private funds arranged by RID to fully implement and operate the ADEQ-approved RID groundwater remedial action and build additional infrastructure to maximize the beneficial use of the treated groundwater are contingent upon the State complying with its legal obligations.

Sincerely,

GALLAGHER & KENNEDY, P.A.

By: 
David P. Kimball III

DPK/sgl
Attachments
7003279

cc: (w/attachments)
Daniel Scarpinato, Governor's Chief of Staff
Annie Foster, Governor's General Counsel

⁴⁶ A.R.S. § 49-290.01.A.

⁴⁷ See Exhibit 7 for ADWR's Conditions for Settlement.

⁴⁸ See A.R.S. §§ 41-1001.01A.7 and 41-1030.B.

EXHIBIT 1

March 5, 2019

ATTORNEY-CLIENT PRIVILEGE

Mr. Enrique Manzanilla
Director, Superfund Division
US EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105-3901

Re: **EPA Needs to Act, Consistent with Existing CERCLA Authority and Prior EPA Actions, and Concur with a Judicially-Approved NCP Compliant and State-Approved Groundwater Response Action to Expedite Remediation at the WVBA WOARF Site in Phoenix, Arizona**

Dear Mr. Manzanilla:

Thank you for your letter received on September 26, 2018 in response to various correspondence and the one meeting between EPA staff and the Roosevelt Irrigation District (RID) over the last year.¹ It was unfortunate that your letter failed to respond to the specific issues raised in our July 19, 2018 letter and, instead, focused on issues that EPA staff raised during our March 13, 2018 meeting in San Francisco and other issues that are extraneous to addressing the relevant groundwater contamination.² In fact, EPA's September 2018 letter runs counter to EPA's broad authority under the CERCLA statute, specific prior findings by a federal court, EPA and the State of Arizona, EPA's specific administrative actions at the adjacent federal Superfund site and the recommendations of EPA's Superfund Task Force. Even more troubling is that the EPA letter inexplicably defers (without the benefit of any rebuttal from RID) to false allegations made by potentially responsible parties (PRPs) under CERCLA for the groundwater contamination in the Motorola 52nd Street federal Superfund (federal M52) Site and the West Van Buren Area (WVBA) Water Quality Assurance Revolving Fund (WQARF) Site in Phoenix, Arizona.

¹ We apologize for the delayed reply. Although we initially drafted this letter in October 2018, we were led to believe that there would be opportunities to address the problems without the need of a formal reply. Unfortunately, no such opportunities materialized and minor tweaks were made to the original draft reply due to the passage of time.

² See footnote 43. As more fully explained in this letter, the EPA positions advanced in its September 2018 letter and resultant inaction by EPA are contrary to EPA's explicit CERCLA authority to authorize RID to act on EPA's behalf, EPA's prior CERCLA response actions in Arizona and the Superfund Task Force recommendations.

We also do not understand why EPA refuses to grant any of the meetings with EPA's leadership requested by RID³ which is an innocent victim of the contamination and the only party that has expended substantial funds to address the massive groundwater contamination that has migrated and continues to migrate from the federal M52 Site into the adjacent WVBA WQARF Site. That ongoing contamination has significantly contaminated numerous operating RID water supply wells and is causing uncontrolled releases of toxic volatile organic compounds (VOCs) into the ambient air of a local low income, minority community in west Phoenix, Arizona. Instead of addressing RID's specific requests or proposed options to expedite a prompt interim CERCLA response action, EPA responds with arguments from parties, who have been identified as PRPs by EPA and/or the Arizona Department of Environmental Quality (ADEQ), that further delay addressing a very serious problem.⁴ Therefore, as has been the unfortunate routine for the last 10 years, this letter will again provide information and identify relevant documents to correct the inaccuracies and misrepresentations that have been raised in EPA's letter, and again request direct meetings with EPA leadership.

As described in RID's prior correspondence, the purpose of RID's outreach to EPA over the past two years is to accelerate cleanup in order to protect human health and the environment and RID's water supply at the largest groundwater contaminant plume in Arizona and one of the largest in the United States. ADEQ's April 24, 2018 letter to EPA identifies relevant documents and data establishing that a continuous and unbroken TCE/PCE plume above applicable aquifer water quality standards (AWQS)⁵ has migrated and continues to migrate from the adjacent, upgradient federal M52 Site into the WVBA WQARF Site, which was placed on Arizona's WQARF Registry of groundwater contamination sites in 1987. In fact, ADEQ has acknowledged that current containment of the plume cannot be confirmed, especially since the ADEQ-approved RID groundwater remedial action, which includes measures to address the potential lack of containment, has not been fully implemented due to lack of funding and continued delay by the State of Arizona, EPA and total failure by any of the identified PRPs to fund the ADEQ-approved remedial action for the WVBA WQARF Site.

As demonstrated in ADEQ's April 24, 2018 letter to EPA, EPA has known for two decades that the groundwater contamination migrating from the federal M52 Site has adversely impacted the WVBA WQARF Site and west Phoenix community. Yet, despite the information presented and readily available to EPA over the past two decades, EPA now claims that the

³ RID has requested meetings with former EPA Administrator Scott Pruitt (April 26, 2018), the head of EPA's Superfund Task Force initiative Steven Cook (July 25, 2018) and EPA Region 9 Administrator Michael Stoker (August 26, 2018) because the ADEQ-approved groundwater response action for the WVBA WQARF Site exceeds the \$50 Million threshold for administrative oversight by EPA Headquarters.

⁴ A federal court in Arizona has noted: "It ... astounds me, to be honest with you, as to why the public entities here didn't step up more forcefully on all bases to do something about what is admittedly a very serious problem" and "I don't think anybody disagrees, or if they do, I don't know on what basis they could possibly suggest that there aren't plumes of very deadly carcinogenic chemicals floating around underneath the city of Phoenix, Arizona." RID Action, Dkt. 1397 at 38:17-21 (Reporter's Transcript of 2/28/17 Hearing).

⁵ Arizona has adopted by statute the primary drinking water maximum contaminant levels (MCLs) as drinking water aquifer water quality standards, and all aquifers in Arizona are classified for drinking water protected use. *See* ARS §§ 49-233.A and 49-224.B.

groundwater contamination is “complex” and addressing the contamination “will take time to complete,” including the delay of another decade before a CERCLA response action occurs.⁶ Even more troubling for the impacted local WVBA community is EPA’s statement that “EPA does not embark upon a large groundwater cleanup project without first placing the Site on the NPL,” which as more fully described below is inconsistent with EPA’s prior response actions at the nearby east Phoenix community impacted by the same adjacent, upgradient federal M52 Site⁷ and the recommendations of EPA’s new Superfund Task Force which are designed to expedite groundwater cleanups to address uncontrolled releases of toxic VOCs into the ambient air of local communities.⁸

The inexcusable lack of any active state or federal governmental response action to address the groundwater contamination and toxic releases and emissions in the WVBA WQARF Site is of particular concern given that data compiled from EPA’s own analytical tool, EJSCREEN, indicate that, like the federal M52 Site, the WVBA WQARF Site is overwhelmingly comprised of an impoverished, undereducated, minority population having a disproportionally higher air toxics cancer risk.⁹ In fact, the WVBA WQARF Site is the only known site in Arizona where an active response action has not been taken by a regulatory agency (EPA or ADEQ) to prevent direct and ongoing public exposure to contaminated groundwater containing toxic VOCs above the drinking water MCLs and EPA public health guidelines to ensure protection of human health and the environment as required by applicable federal and Arizona laws.

Contrary to EPA’s Letter, CERCLA Authorizes Expedited Response Actions to Address Imminent and Substantial Dangers to the Public Health, Welfare or the Environment

Despite EPA’s September 2018 letter that claims it will take significant time to address the contaminated groundwater that has migrated and continues to migrate from the federal M52 Site into the WVBA WQARF Site, Section 104 of CERCLA clearly states that

[w]hensoever ... any hazardous substance is released or there is a substantial threat of such a release into the environment ... which may present an imminent and

⁶ Based on EPA’s statements in its letter and pace at the adjacent federal M52 Site, it will be another decade for EPA to address the impacts of the contaminated groundwater migrating from the federal M52 Site into the WVBA WQARF Site that is contaminating the WVBA groundwater and being released into the ambient air of the local community. This is based on EPA’s statements that “it often takes a year or more from the Governor’s concurrence to get a site proposed to the NPL,” that “it can take another year or more for EPA to make a final determination on whether to finalize a proposed NPL site” and potentially another decade for a new RI/FS since it has been 11 years since Operable Unit 3 (OU3) was created at the federal M52 Site and an RI/FS still is not finalized.

⁷ Also contrary to EPA’s statement, EPA administratively extended the boundaries of the existing federal M52 Site to include the former East Washington WQARF Site (which currently constitutes OU2 and OU3 of the federal M52 Site) for the same reasons ADEQ has requested EPA in its April 24, 2018 letter to evaluate a further extension of those boundaries to include the WVBA WQARF Site.

⁸ EPA’s position conflicts with ADEQ’s 2013 determination that remediation measures should be taken to mitigate the uncontrolled releases of toxic VOCs into the air, as required at other EPA groundwater cleanups. See ADEQ Approval of RID’s Modified ERA, dated February 1, 2013 (Attachment A).

⁹ See Presentation provided to EPA on March 13, 2018. (Attachment B)

substantial danger to the public health or welfare, the President [i.e., EPA] is authorized to act, consistent with the national contingency plan, to ... provide for remedial action relating to such hazardous substance ... at any time ... or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment. When the President determines that such action will be done properly and promptly by the owner or operator of the facility ..., the President may allow such person to carry out the action,¹⁰ conduct the remedial investigation, or conduct the feasibility study in accordance with section 9622 of this title.¹¹

There is no dispute that hazardous substances have been released into the environment that may present an imminent and substantial danger to public health, welfare and the environment in the WVBA WQARF Site. As noted in ADEQ's April 24, 2018 letter to EPA, the 1994 Record of Decision for OU2 at the federal M52 Site noted that the "contamination extends beyond the ... [OU2] area and into the West Van Buren WQARF area, to approximately 75th Avenue." The 2015 OU3 Remedial Investigation Report for the adjacent federal M52 Site, prepared by two parties identified by EPA as PRPs, noted that the "presumed distal end of the M52 VOC plume terminates within the WVBA WQARF Site" and that "a remedy for the WVBA area will mitigate any potential exposure to contaminated groundwater downgradient of OU3."¹² Additionally, ADEQ specifically has determined on multiple occasions, and in defiance of the PRPs' arguments to the contrary, that RID's remedial action costs incurred in implementing the ADEQ-approved RID groundwater remedial action were "reasonable, necessary and cost-effective [and] in response to a release or threat of release of a hazardous substance or pollutant

¹⁰ Given this clear statutory language, it is unclear why EPA states in its recent letter that "[i]n rare instances, non-liable parties may also play a role in performing a portion of the response action with EPA oversight." In fact, EPA has encouraged RID to "continue working ... to ensure that remedial action is taken in a timely manner to protect resources for future use." EPA's letter to RID, 2 (April 4, 2017). Additionally, CERCLA's statutory language is consistent with Arizona's WQARF requirement that the "well owner or water provider whose water use is being addressed may, in its sole discretion, elect to construct, operate, or construct and operate the water treatment ... component of the remedy or early response action which is designed to address its use." AAC R18-16-411.G. The Superfund Task Force recommendations also support RID's implementation of the ADEQ-approved RID remedial action to expedite cleanup using private funds. In the recommendations, "EPA recognizes that it should support, where appropriate, innovative approaches to promote third-party investment in cleanup" to "utilize various federal and state authorities to conduct response actions that are consistent with CERCLA and the NCP," including the "use of early response actions at Superfund sites." Superfund Task Force Recommendations (2017) (*See* Background to Goal 3, Strategy 1 and Recommendations 13 and 12). Allowing RID to "properly and promptly ... carry out the action" is even more critical to ensure protection of public health and the environment given EPA's statement in its September 2018 letter that even if the WVBA WQARF Site becomes a NPL site in a couple of years, "it has to compete with all of the other NPL sites for staff and funding resources."

¹¹ 42 U.S.C. § 9604(a). RID certainly qualifies as an "owner or operator" (42 U.S.C. § 9601(20)(A)) of its wells (which qualify as a "facility" as that term is broadly defined in 42 U.S.C. § 9601(9)) that have been contaminated by the groundwater contamination.

¹² Final OU3 RI Report, 3 and 35. EPA's knowledge and inaction for more than 20 years to address the groundwater contamination migrating from the federal M52 Site that has contaminated the WVBA WQARF Site contradicts EPA's current claim in its September 2018 letter that "EPA has not had *any involvement in the investigation and nature and extent of contamination at the West Van Buren WQARF Site.*"

that presents an immediate and substantial endangerment to the public health or the environment.”¹³

Therefore, EPA has the clear and specific CERCLA statutory authority to “provide for remedial action relating to such hazardous substance ... at any time ... or take any other response measure consistent with the national contingency plan.” In reviewing RID’s ongoing remedial actions between 2008 and 2015, a federal court determined that “RID did as a matter of law substantially comply with the applicable requirements set forth in the NCP.”¹⁴ Therefore, EPA has the clear CERCLA statutory authority to concur with the ADEQ-approved and NCP-compliant RID groundwater remedial action to expedite the groundwater cleanup and address the impacts of the contaminated groundwater that has migrated and continues to migrate from the federal M52 Site into the WVBA WQARF Site, where the toxic VOCs have contaminated RID’s water supply and are being directly released into the ambient air of the local community. Again, such action by EPA would be consistent with EPA’s Superfund Task Force recommendations that EPA should “utilize various federal and state authorities to conduct response actions that are consistent with CERCLA and the NCP.”¹⁵

As noted in RID’s July 19, 2018 letter to EPA and contrary to the statements in EPA’s September 2018 letter, EPA in fact has previously adopted the implementation of a long-term groundwater treatment response action prior to NPL listing with respect to the very same groundwater contamination plume. In September 1988, EPA concurred with an ADEQ-approved interim groundwater pump and treatment remedy at OU1 of the federal M52 Site, which was more than a year before the federal M52 Site was listed on the NPL in October 1989.¹⁶ The 1988 Record of Decision (ROD) “serve[d] as EPA concurrence with the remedial action for the Motorola 52nd Street site, as approved by [ADEQ],” noting that “ADEQ approved this remedial action in conformance with: the Arizona Administrative Code; Arizona Revised Statute; ... the National Contingency Plan, to the extent practicable; and relevant state and federal requirements.”

¹³ See ADEQ’s approvals pursuant to ARS § 49-282.E.11. (Attachment C)

¹⁴ *Roosevelt Irrigation Dist. v. Salt River Project Agric. Improvement and Power Dist.*, 210CV00290DAEBGM, 2017 WL 2712879, at *15 (D. Ariz. Mar. 15, 2017), *reconsideration denied*, 210CV00290DAEBGM, 2017 WL 2712881 (D. Ariz. May 12, 2017).

¹⁵ Superfund Task Force Recommendations (2017) (*See* Recommendation 12).

¹⁶ Again, EPA’s prior actions at OU1 of the federal M52 Site contradict EPA’s statement in its September 2018 letter that “EPA does not select and oversee long-term remedial actions without the assurance that the Superfund will be available in the event the performing party is unable to meet the requirements of the remedy that EPA has selected in its Record of Decision.” EPA selected a long-term remedial action at OU1 of the federal M52 Site before the Site was placed on the NPL, which listing is necessary “to determine what CERCLA-financed remedial action(s), if any, may be appropriate.” 83 Fed. Reg. 46,408, 46,408 (Sept. 13, 2018) (“Final Rule: National Priorities List”). EPA’s current excuse to delay any CERCLA response action without assurance that the Superfund will be available is contradicted by EPA’s Superfund Task Force recommendation to consider P3 funding (which is readily available to fully implement the ADEQ-approved, NCP-compliant RID groundwater response action) to expedite needed response actions, which was a specific charge of the former EPA Administrator. Superfund Task Force Recommendations (2017) (*See* Executive Summary).

EPA clearly has the CERCLA statutory authority and precedent to concur with RID's ADEQ-approved and NCP-compliant remedial action to expedite an interim CERCLA response action to address the imminent and substantial endangerment to public health, welfare and the environment at the WVBA WQARF Site caused in substantial part by contamination migrating from the very same federal M52 Site. Given the presentation provided to EPA last year¹⁷ and the availability of substantiating documents on ADEQ's website,¹⁸ it is incredible that EPA would claim that "ADEQ has not selected a remedy," when ADEQ, after years of agency review and public notice and comment, formally approved an Early Response Action (ERA) in 2010, a Modified ERA in 2013 and the selected remedial action proposed in the RID Feasibility Study Report in 2015. ADEQ's approvals were issued under the Arizona WQARF remediation program that was modeled after CERCLA and is "Arizona's version of the federal 'superfund' program."¹⁹ A federal court also has held that, in addition to substantial compliance with the NCP, "RID has demonstrated that it engaged in an extensive vetting process" and that "the record indicates that RID gave substantial thought and attention to compliance with site-specific Arizona law,"²⁰ which also establishes compliance with the "applicable, relevant and appropriate requirements" [ARARs] of CERCLA.²¹

In June 2010, after having "carefully analyzed technical and legal documents and correspondence contained in the Site file, including submittals by RID and other interested parties since September 2009, and comments received through the public participation process" and having "analyzed the [Early Response Action] Work Plan to determine compliance with applicable State statutes and rules," ADEQ formally approved the RID ERA because "RID has a unique opportunity to increase the removal of contamination from the aquifer via its wells" and "[w]ithout treatment, these contaminants will continue to degrade the quality of the aquifer within the Site."²² Again in 2013, ADEQ formally approved RID's Modified ERA and "RID's objectives to protect RID's supply of water and addressing current and future risks to public health, welfare, and the environment [[AAC] R18-16-405(A)]."²³ Additionally, ADEQ's formal approval of the Modified ERA required "RID's implementation of ... measures" to limit exposures from the "significant volatilization and transfer of contaminants, from water into the air, [that] is occurring and ongoing."²⁴ Finally, in 2015, ADEQ "determined that the [RID] FS Report [and proposed remedial action] meets the requirements of Arizona Revised Statutes 49-287.03 and Arizona Administrative Code R18-16-407 and therefore ADEQ is approving RID's FS Report."²⁵

¹⁷ See RID's presentation to EPA on March 13, 2018. (Attachment B)

¹⁸ See ADEQ's online repository at <https://legacy.azdeq.gov/environ/waste/sps/wvb.html>.

¹⁹ AAR Volume 8 Issue #13 at page 1492.

²⁰ *Roosevelt Irrigation Dist. v. Salt River Project Agric. Improvement and Power Dist.*, 210CV00290DAEBGM, 2017 WL 2712879, at *13-14 (D. Ariz. Mar. 15, 2017), *reconsideration denied*, 210CV00290DAEBGM, 2017 WL 2712881 (D. Ariz. May 12, 2017).

²¹ 42 U.S.C. § 9621.

²² See ADEQ letter to RID (June 24, 2010). (Attachment D)

²³ See ADEQ letter to RID (February 1, 2013). (Attachment A)

²⁴ *Id.*

²⁵ See ADEQ letter to RID (April 13, 2015). (Attachment E)

In 2014 and 2017, ADEQ also independently selected RID's Modified ERA as the "most prudent course of [remedial] action" for the VOC-contaminated groundwater at the WVBA WQARF Site when it internally evaluated and calculated the estimated total remedial action costs (over the next 30 years) at each groundwater contamination site on the WQARF Registry list.²⁶

Given ADEQ's CERCLA-like formal approvals under the WQARF program and a federal court's determination of NCP compliance of RID's remedial actions, EPA has the clear CERCLA statutory authority and precedent at OU1 of the federal M52 Site to concur with the ADEQ-approved and NCP-compliant RID groundwater remedial action as an interim CERCLA response action to expedite addressing the imminent and substantial endangerment to public health, welfare and the environment at the WVBA WQARF Site. As noted in RID's July 19, 2018 letter, and ignored by EPA in its September 2018 response, rarely, if ever, has EPA been presented with a groundwater remedial action already approved and determined by a state and federal court to comply with applicable state law, to substantially comply with the applicable federal NCP, to have been subject to substantial public participation and comment and that meets all applicable state and federal remedial action standards and requirements [*i.e.*, ARARs] at no cost to the federal Superfund.

There is no Justifiable Reason for EPA to Delay an Interim CERCLA Response Action to Address the Imminent and Substantial Danger Caused in Substantial Part by Groundwater Contamination Migrating from the Federal M52 NPL Site Simply so EPA can Repeat the NCP Process

It is remarkable that EPA's September 2018 letter completely ignores and fails to consider expeditiously addressing the WVBA WQARF Site pursuant to its authority under CERCLA Section 104. Such expeditious EPA action could include administratively extending the current boundaries of the existing federal M52 Site to include most, if not all, of the WVBA WQARF Site for all the reasons described in ADEQ's April 24, 2018 letter to EPA, similar to EPA's prior extension of the federal M52 Site boundaries to include the East Washington WQARF Site that currently constitutes OU2 and OU3 of the federal M52 Site. Administratively extending the current boundaries of the federal M52 Site to include the groundwater contamination that has migrated from the federal M52 Site into the WVBA WQARF Site, as ADEQ has requested EPA to evaluate pursuant to applicable CERCLA policies and procedures, would negate the lengthy delay associated with separately listing the WVBA WQARF Site on the NPL as indicated in EPA's letter.

Such expeditious EPA action also could include concurring with the ADEQ-approved and NCP-compliant RID remedial action as an interim CERCLA response action at the WVBA WQARF Site, similar to EPA's prior concurrence with an ADEQ-approved remedial action as an interim CERCLA response action at OU1 of the federal M52 Site. Such prior concurrence by

²⁶ ADEQ, Evaluation of Potential Future Costs at Arizona Superfund Sites, 2, App. B-14 (January 2014), Update (2017).

EPA with an ADEQ-approved remedial action as an interim CERCLA response action at OU1 of the federal M52 Site was clearly consistent with EPA's CERCLA statutory authority under Section 104.

Instead of exercising the same CERCLA administrative and/or statutory response action authority for the WVBA WQARF Site, EPA now simply claims that it "is not in a position to select and oversee implementation of a remedy at this juncture" and that EPA does not "oversee remedial activities developed under state programs where EPA was not involved in the investigation, evaluation of remedial alternatives, and selection of the response action." There is no justifiable reason why RID and the WVBA community should be subjected to direct and ongoing exposures to toxic VOCs that have migrated and continue to migrate from the federal M52 Site for another decade simply to allow EPA an opportunity to duplicate the WQARF CERCLA-like process, which a federal court held to be substantially compliant with the federal NCP. As clearly stated in CERCLA Section 104, the only requirement is that EPA "act consistent with the [federal NCP]."²⁷ In fact, EPA's current position conflicts with EPA's own guidance that notes CERCLA's provisions "reflect Congress' judgment that CERCLA response actions should not be delayed by time-consuming and duplicative administrative requirements."²⁸

Moreover, EPA's September 2018 letter contradicts not only EPA's prior CERCLA administrative action in extending the boundaries of the federal M52 Site to include contamination migrating into the East Washington WQARF Site, as well as EPA's prior concurrence with an ADEQ-approved remedial action as an interim CERCLA response action at OU1 of the federal M52 Site, but also the Superfund Task Force recommendations and EPA Directives for addressing large and/or complex contamination sites. In fact, EPA "[r]egions are encouraged to consider greater use of early and/or interim actions ... to address immediate risks."²⁹ The Directives reiterate "EPA's stated bias for initiating responses as soon as the information makes it possible to do so and recommends the use of ... early actions to quickly address high risk areas" and "the 'phased approach' strategy for addressing contaminated groundwater integration, site characterization, early action, and remedy selection."³⁰

As evident by ADEQ's April 24, 2018 letter to EPA, EPA has sufficient information to establish remedial action objectives (RAOs) for an interim CERCLA response action for the WVBA WQARF Site, as EPA already has established RAOs to address the groundwater contamination in OU3 of the adjacent, upgradient federal M52 Site in order to protect public health, welfare and the environment.³¹ These RAOs for OU3 include:

- RAO 1 – Prevent exposure to groundwater containing COCs above EPA's Maximum Contaminant Levels to ensure protection of human health and the environment.

²⁷ 42 U.S.C. § 9604(a)(1).

²⁸ EPA, Permits and Permit "Equivalency" Processes for CERCLA On-site Response Actions, 4 (February 1992).

²⁹ EPA, Superfund Task Force Recommendations, 2 (July 2017).

³⁰ *Id.*

³¹ EPA Comments on 11/30/26 OU3 Final FSTM (February 3, 2017).

- RAO 2 – Capture the migration of groundwater containing COCs above EPA’s Maximum Contaminant Levels, past a location west of 7th Avenue [*i.e.*, within the WVBA WQARF Site].³²
- RAO 3 – Restore groundwater to beneficial use within a reasonable timeframe. Beneficial use is potential future use as potable water.³³

According to EPA’s “Groundwater Remedy Completion Strategy,” the “[e]stablishment of RAOs [remedial action objectives] in the Superfund decision document generally provides an important foundation for development of a site-specific strategy.”³⁴ In addition to RAOs, “proposed and final decision documents should include ‘cleanup levels for each medium (*i.e.*, contaminant-specific remediation goals), the basis for cleanup levels, and risk at cleanup levels” since “[g]roundwater cleanup levels are established based on promulgated standards (*e.g.*, federal or state MCLs or non-zero MCLGs), or other standards to be found in ARARs.”

EPA in its September 2018 letter is now claiming it cannot timely address the groundwater contamination that EPA has known for over 20 years has migrated and continues to migrate from OU3 into the WVBA WQARF Site, where it has and continues to be contaminating RID’s water supply and is being released into the ambient air and directly exposing the local community to toxic VOCs, in violation of its own RAOs for the very contamination to which the RAOs apply. It is important to note that EPA’s RAOs for OU3 of the federal M52 Site are substantially the same as the mandatory WQARF remedial action criteria in ARS § 49-282.06.A.1-2, which are achieved by the ADEQ-approved and NCP-compliant RID remedial action for the WVBA WQARF Site:

- 1. Assure the protection of public health and welfare and the environment.
- 2. To the extent practicable, provide for the control, management or cleanup of the hazardous substances in order to allow the maximum beneficial use of the waters of the state.

Despite ADEQ’s formal CERCLA-like approvals of the RID remedial action and a federal court confirming the RID remedial actions substantially comply with CERCLA ARARs and the NCP, EPA’s current position is simply one of unjustified delay.

As discussed in more detail below, EPA’s casual dismissal and refusal in its September 2018 letter to discuss or pursue the ADEQ-approved RID remedial action as an interim

³² This RAO is another example of EPA confirming that groundwater contamination migrating from the federal M52 Site has contaminated the WVBA WQARF Site given that 7th Avenue is the arbitrary boundary line between the upgradient federal M52 Site and the downgradient WVBA WQARF Site.

³³ EPA Comments on 11/30/16 OU3 Final FSTM (February 3, 2017)

³⁴ EPA, Groundwater Remedy Completion Strategy (May 2014). The purpose of the 2014 strategy document “is to help focus resources on the information and decisions needed to effectively complete groundwater remedies and to ensure that these remedies protect human health and the environment.” The strategy document “presents a recommended ‘groundwater remedy completion strategy’ for evaluating Superfund groundwater remedy performance and making decisions to help facilitate achievement of RAOs [remedial action objectives] and associated cleanup levels.” *Id.* at 3.

CERCLA response action or to administratively extend the boundaries of the federal M52 Site in order to promptly address serious public health and environmental issues, as being a matter that is simply “a disagreement about the appropriate end use of the water,” is ludicrous. EPA is fully aware that the PRPs do not want RID to implement a remedial action that complies with EPA’s RAOs for OU3 of the federal M52 Site or the mandatory “remedial action criteria” of the Arizona WQARF program³⁵ or the ADEQ-established “remedial objectives” for the WVBA WQARF Site.³⁶ For all the aforementioned reasons, EPA should not delay implementation of an ADEQ-approved and NCP-compliant remedial action as an interim CERCLA response action when the remedial action goals and objectives under applicable federal and Arizona laws can be readily achieved to address contamination migrating from the federal M52 Site into the WVBA WQARF Site to protect public health, welfare and the environment. To do otherwise, raises the specter that EPA is not fulfilling its CERCLA responsibilities to protect public health and the environment in part due to the influence of other federal agencies and departments which have been identified as PRPs responsible for the contamination and which are opposing any response action in the WVBA WQARF Site.

CERCLA Does Not Address Water Rights or Mandate the End Use of Water

RID fully agrees with EPA’s position stated in its September 2018 letter that “CERCLA does not address water rights or mandate the end use of water,” which is why it makes no sense that EPA would raise issues relating to “water rights” and “water end use” as apparent justification for delaying any interim CERCLA response action to expeditiously address the known contamination that has migrated and continues to migrate from the federal M52 Site into the WVBA WQARF Site to adversely impact public health and the environment. It is remarkable that in its letter EPA is repeating arguments of the PRPs, including federal agencies and departments, who are on record in opposing compliance with federal and state remediation and public health laws and the EPA and ADEQ-established remedial action objectives, even though these same PRP arguments have been rejected by ADEQ and a federal court and would expose the local community to releases of toxic VOCs.

Water Rights

EPA is fully aware that the implementation of the OU1 interim groundwater extraction remedy at the federal M52 Site is not subject to an independent water right, because “a Poor Quality Groundwater Withdrawal Permit [PQGWP] was issued by the Arizona Department of Water Resources (“ADWR”) for the withdrawal and disposal of OU1 groundwater.”³⁷ In fact, the 1988 ROD, which acted as EPA’s concurrence with the ADEQ-approved remedial action as EPA’s interim remedy for OU1 prior to NPL listing, includes ADEQ’s response that a PQGWP would be necessary to implement the approved remedial action “since Motorola does not have any water rights.”³⁸ As a matter of Arizona law and customary practice, PQGWPs are Arizona

³⁵ See A.R.S. § 49-282.06

³⁶ ADEQ, Final Remedial Objectives Report (2012).

³⁷ 2011 Sitewide Five-Year Review Report, Motorola 52nd Street Superfund Site, Phoenix, Arizona, I-21 (2011).

³⁸ 1988 ROD, Att. 3, Response to Question 54.

permits “usually issued [by ADWR] in conjunction with CERCLA, WQARF, or leaking UST sites for pump and treat operations ... to allow the withdrawal of groundwater”³⁹ to implement government-approved groundwater response actions.

Despite Arizona law specifically requiring that ADWR “shall expedite the processing and issuance of permits [such as a PQGWP] ... to facilitate the prompt conduct of [ADEQ] approved remedial actions,”⁴⁰ RID has been unlawfully denied a PQGWP that is and has been routinely and consistently issued as a matter of Arizona law and practice by ADWR for the past 30 years due to the apparent political influence and improper interference by prominent PRPs. For example, ADWR has issued a PQGWP more than a year before ADEQ even approved a groundwater pump and treat response action that treats VOC-contaminated groundwater to meet applicable drinking water aquifer water quality standards.⁴¹ If ADWR had issued a PQGWP to implement the ADEQ-approved and NCP-compliant RID groundwater remedial action, as specifically required by Arizona law and consistent with virtually every other groundwater pump and treat remedial action in Arizona over the last 30 years, there would be no need for EPA’s involvement in the WVBA WQARF Site since RID has secured private funds through a public-private partnership (P3) structure to expedite full implementation of the ADEQ-approved and NCP-compliant RID remedial action. Contrary to this Arizona statutory obligation to “expedite the processing and issuance” of a PQGWP, ADWR’s current Director unlawfully refuses to issue a PQGWP to implement the ADEQ-approved and NCP-compliant RID groundwater remedial action.⁴² As discussed at our March 13, 2018 meeting, such actions are not shocking given that

³⁹ ADWR, Third Management Plan for Phoenix Active Management Area, 7-10 (1999). Even parties that have independent water rights utilize PQGWPs to implement approved pump and treat remedial actions. In fact, the PRPs’ WVBA Working Group, which includes the City of Phoenix and SRP which both have independent water rights, informed ADEQ that “[i]n accordance with A.R.S. §45-516, a Poor Quality Groundwater Withdrawal Permit would be required by ADWR to pump a groundwater extraction well within the Phoenix Active Management Area.” In 2002, ADWR issued SRP a PQGWP to remediate groundwater under an ERA to prevent the contaminated groundwater from impacting a production well.

⁴⁰ A.R.S. § 49-290.01.A.

⁴¹ ADWR issued a PQGWP effective July 15, 2010 “in anticipation of the early response action (ERA) at the site and the need to pump groundwater from extraction wells and developing the groundwater treatment system.” Clear Creek Assoc., Draft Remedial Investigation Report, 56th Street and Earll Drive WQARF Site (2018). The PQGWP was issued nearly a year before Freescale entered into an agreement with ADEQ in 2011 to “design and implement an ERA.” https://legacy.azdeq.gov/environ/waste/sps/56th_Street_Earll_Drive.html

⁴² Initially, the current ADWR Director, who previously objected to ADEQ’s approval of RID’s remedial action on behalf of a PRP, and ADWR staff opposed issuing a PQGWP based on conditions that violate Arizona law and were inconsistent with ADWR’s 30-year practice of routinely issuing PQGWPs to facilitate government-approved remedial actions. See January 6, 2017 letter to ADWR regarding concern over new and unlawful permit conditions. (Attachment F) Next, the current ADWR Director tried to justify not issuing a PQGWP by claiming in a public meeting that a PQGWP was unnecessary because of RID’s existing and independent water right that enables RID to implement the ADEQ-approved and NCP-compliant RID groundwater remedial action. At the same public meeting, the current ADWR Director failed to disclose that he had taken unlawful actions to revoke prior ADWR determinations confirming the same RID existing water right. As discussed during our March 13, 2018 meeting, the former ADWR Director unlawfully revoked a prior 2013 ADWR written determination that the duration of certain private contracts did not adversely impact RID’s water right to withdraw contaminated groundwater and transport remediated water to the West Valley for assured water supply purposes. See 2013 ADWR determination (Attachment G) Although the current ADWR Director unlawfully revoked the prior 2013 determination soon after being appointed, ADWR staff drafted clarification letters that further supported the prior 2013 ADWR written

the current ADWR Director was the former Water Manager for the City of Phoenix, which is a prominent PRP in the WVBA WQARF Site, and the current ADWR Director signed letters of opposition to ADEQ's approval of the RID Early Response Action.⁴³

However, the prompt conduct of the ADEQ-approved and NCP-compliant RID groundwater remedial action for the WVBA WQARF Site, as mandated by Arizona law⁴⁴ and authorized under CERCLA Section 104, should not be unlawfully delayed by withholding the issuance of a State permit from ADWR due to political influence. In fact, CERCLA specifically provides that "[n]o Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section."⁴⁵ The NCP interprets "on-site" as "the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action," and EPA policy further defines "on-site" to "include the soil and the groundwater plume that are to be remediated."⁴⁶ Additionally, EPA policy identifies that the "response actions covered by CERCLA section 121(e)(1) include those conducted pursuant to CERCLA sections 104, 106, 120, 121, and 122 ... [and] also include response actions implemented by a State or political subdivision operating pursuant to a contract or cooperative agreement executed pursuant to CERCLA."⁴⁷

As a result, RID has simply requested that EPA act in accordance with its existing CERCLA statutory authority, which EPA has used nationally and at the adjacent federal M52 Site, to address the groundwater contamination that has migrated and continues to migrate from the federal M52 Site into the WVBA WQARF Site, where it is contaminating RID's water supply and being directly released into the ambient air and exposing the local community to toxic VOCs. Any of the various CERCLA options presented by RID to EPA over the last year, including EPA's concurrence with the ADEQ-approved and NCP-compliant RID groundwater remedial action consistent with EPA's prior concurrence with an ADEQ-approved remedial action as an interim CERCLA response action at OU1 of the federal M52 Site prior to NPL listing, would trigger CERCLA's exemption from obtaining a PQGWP from the biased and

determination. See draft clarification letter. (Attachment H) However, these clarification letters were never finalized because ADWR's current Director unlawfully gave veto authority to a PRP.

⁴³ City of Phoenix letters, dated December 23, 2009 and April 21, 2010.

⁴⁴ A.R.S. §49-290.01.A

⁴⁵ 42 U.S.C § 9621.e.1.

⁴⁶ EPA, Permits and Permit "Equivalency" Processes for CERCLA On-site Response Actions, 2 (February 1992).

⁴⁷ *Id.* As a political subdivision, RID raised the "cooperative agreement" issue at the March 13, 2018 meeting as a potential method of implementing EPA's authority under CERCLA Section 104. In fact, during that meeting, EPA acknowledged that there were other administrative options to allow interim response actions while EPA implements the NPL process, if NPL listing were necessary. As a result, RID identified the process at the Anaconda site as another potential option to expedite a response action and avoid additional delay. To date, EPA has failed to identify any potential options for expediting an interim CERCLA response action, as promised on March 13, 2018. Instead, EPA simply suggests that the process to evaluate actions at the WVBA Site is complex and will take time to complete, possibly requiring RID and the local WVBA community to wait another decade to address the ongoing contamination of RID's water supply and the direct exposure of the local community to releases of toxic VOCs attributable in substantial part to the groundwater contamination migrating from the federal M52 Site into the WVBA WQARF Site.

conflicted current ADWR Director and the PRP political influence on the State.⁴⁸ The federal statutory exemption from the issuance of a PQGWP would provide the certainty to enable the P3 funding to expeditiously implement, operate and maintain the ADEQ-approved and NCP-compliant RID remedial action until the applicable aquifer water quality standards and remedial objectives are achieved. EPA's policy that "[i]n implementing remedial actions, EPA has consistently taken the position that the acquisition of permits is not required for on-site remedial actions" is consistent with CERCLA's provisions, which "reflect Congress' judgment that CERCLA response actions should not be delayed by time-consuming and duplicative administrative requirements."⁴⁹ If EPA would utilize its broad existing CERCLA statutory authority and follow its prior practice at OU1 of the federal M52 Site of concurring with ADEQ-approved and NCP-compliant remedial actions (as determined by a federal court in RID's case), the P3 funding would fully implement a NCP-compliant remedial action within a year to address the largest groundwater contaminant plume in Arizona, compared to EPA's position in its September 2018 letter that RID and the WVBA community need to wait a long and indeterminant time, possibly another decade, for remediation and protection of public health and the environment. Additionally, EPA's concurrence with the ADEQ-approved and NCP-compliant RID groundwater remedial action as an interim CERCLA response action⁵⁰ pursuant to EPA's CERCLA statutory authority will ensure that "RID will continue to ensure its activities do not exacerbate pathways for contaminant exposure,"⁵¹ as requested by EPA in its September 2018 letter to RID.

However, instead of responding to RID's requests to meet with EPA leadership to expedite a CERCLA response action under several potential regulatory and administrative options consistent with the authority and purposes of CERCLA and the Superfund Task Force recommendations, EPA's September 2018 letter strangely suggests that RID has asked EPA to "have a role in the ongoing water rights dispute."⁵² As expressly noted by EPA in its own letter

⁴⁸ Consistent with EPA guidance, the reporting requirements of a PQGWP would still be required for implementing the ADEQ-approved and NCP-compliant RID groundwater remedial action.

⁴⁹ EPA, Permits and Permit "Equivalency" Processes for CERCLA On-site Response Actions, 4 (February 1992).

⁵⁰ As discussed in San Francisco during the March 13, 2018 meeting, RID acknowledges that after the interim response action is operational, additional efforts to optimize the response action may be necessary.

⁵¹ As previously discussed with EPA, RID is in the process of replacing a water supply well that already has an installed wellhead treatment system to remove toxic VOCs. However, RID would prefer to discuss certain options with EPA that would optimize remediation of the contaminated aquifer consistent with applicable Arizona law and EPA's own remedial action objectives for OU3 of the federal M52 Site.

⁵² EPA references a letter received from the City of Phoenix claiming that EPA should not act as authorized by CERCLA to implement a NCP-compliant groundwater remedial action if it "would take water out of the City of Phoenix and SRP service area." It is ridiculous that EPA gives any credence to such a position without at least some discussion with RID, especially given that the City of Phoenix and SRP (both PRPs in the WVBA WQARF Site) obtained approval from ADEQ to install new groundwater remediation extraction wells within the WVBA WQARF Site (but of course failed to follow through), which is within the City of Phoenix and SRP service area, that would have been pumped, treated to aquifer water quality standards prior to discharge to the RID system and transported outside the City of Phoenix and SRP service area, in violation of precisely what the City of Phoenix and SRP have objected to EPA about RID. In fact, the same concept was proposed as the pump and treat alternative in the 2015 RI/FS Report for OU3 of the federal M52 Site, prepared for EPA by two PRPs. Yet despite these facts, EPA inexplicably suggests in its September 2018 letter that the City of Phoenix letter is relevant despite EPA's claim that "CERCLA does not address water rights or mandate the end use of water."

and exemplified by EPA's actions at OU1 of the federal M52 Site, water rights are irrelevant to implementing a response action consistent with the federal NCP to meet applicable water quality standards, achieve RAOs, meet ARARs and otherwise protect public health and the environment. The irrelevance of state water rights or state permits (*e.g.* a PQGWP) to implement a CERCLA interim response action is further exemplified by the groundwater extraction associated with the ongoing interim response action at OU2 of the federal M52 Site, where none of the major documents discuss whether there is a water right or PQGWP or CERCLA exemption as the basis for the CERCLA groundwater pump and treat interim response action. Such state water rights and/or permit requirements are expressly exempt under CERCLA for the express purpose of avoiding delay in implementing needed response actions to protect public health and the environment.⁵³ EPA's apparent adoption of the PRP arguments, which violate federal and state law and have been rejected by ADEQ and a federal court, would result in little to no remediation of contaminated groundwater supplies ever being conducted unless a party with clear independent water rights⁵⁴ would implement the groundwater pump and treat remediation; thus, granting polluters a license to pollute in violation of applicable federal and Arizona laws.

End Use of Treated Water

Despite EPA rightfully claiming that "CERCLA does not ... mandate the end use of water," EPA's September 2018 letter claims that a dispute raised by PRPs over the potential end use of the groundwater justifies further delay by EPA on moving forward with implementing RID's NCP-compliant remedial action. This end use dispute already has been argued many times by the PRPs before ADEQ and a federal court, and each time the PRPs' arguments have been rejected. Thus, it is surprising again that without conferring with RID, EPA would even consider the irrelevant end use issue to the detriment of the contaminated aquifer and the public health of the local community.

In response to numerous PRP comments on RID's FS Report years ago raising the groundwater end use issue, RID strongly objected,

as violative of multiple Arizona laws and WQARF rules ..., to the fundamental proposition incorporated within all the [PRP] comments that the commenters are able to indiscriminately and without authority pollute Arizona's drinking water protected use aquifers and water supply wells and have no liability for violating the applicable state water quality standards and no remedial obligation to control, manage or cleanup their contamination, unless and until only certain beneficial uses are made of the contaminated resource.⁵⁵

⁵³ 42 U.S.C. §9621e.1.

⁵⁴ It is telling that a PRP identified by EPA for the groundwater contamination has raised the concern as to RID's independent water right even though the unbiased former ADWR Director made such a determination in 2013 and the same PRP has made a declaration of RID's independent water right before ADWR and state courts. *See* first few pages of declaration of RID's independent water rights. (Attachment I)

⁵⁵ RID Response to PRPs' Comments on RID FS Report, 1 (February 6, 2015).

RID noted that neither CERCLA nor WQARF

grant an unfettered license to pollute Arizona's aquifers and water supply wells without legal or regulatory consequence if no or only certain beneficial uses were currently being made of the polluted resource. This shameful and unlawful position shared by all of the commenters is epitomized by the false statement in the AZ Chamber Comments that the WGFS Report 'conclusively demonstrates ... that treatment is NOT now needed and can be avoided entirely.'⁵⁶

Notwithstanding the PRPs' same end use argument, ADEQ rejected it and approved the proposed remedial action in RID's FS Report.⁵⁷ Furthermore, the PRPs speak out of both sides of their mouths on the end use issue. Despite the PRPs' argument that RID's water supply wells do not need to be addressed now to be fit for all reasonably foreseeable end uses over the next 100 years, including as a municipal water supply, as required by applicable WQARF statutes and rules and as established by ADEQ's remedial objectives for the WVBA WQARF Site,⁵⁸ the PRPs declared to ADEQ in their own FS Report that "[f]or each end use scenario, extracted groundwater would need to be treated to meet AWQS for WVBA COCs prior to reinjection or discharge to an end user."⁵⁹ In fact, the PRPs specifically admit that "extracted groundwater would need to be treated to AWQS for WVBA COCs prior to discharge to the RID system"⁶⁰ for its current irrigation use.

This necessity to treat extracted contaminated groundwater to AWQS at the wellhead is required by various Arizona laws and constitutes an ARAR under CERCLA. ADEQ informed EPA in its letter, dated April 24, 2018, that an "important factor is that all aquifers in Arizona are classified as 'drinking water protected use', pursuant to Arizona Revised Statutes §49-224.B."⁶¹ Additionally, Arizona requires that a "remedial action shall ... [t]o the extent practicable, provide for the control, management or cleanup of the hazardous substances in order to allow the maximum beneficial use of the waters of the state"⁶² and "address, at a minimum, any well that at the time of selection of the remedial action ... would now or in the reasonably foreseeable

⁵⁶ *Id.* In its response, RID noted a purpose of the PRPs' letter was to try and "avoid civil and criminal violations of applicable water quality standards as proposed by the WGFS Report and in the comments of its supporters." See A.R.S. §§ 49-262 and 49-263.

⁵⁷ See ADEQ's April 13, 2015 approval of RID's FS Report. (Attachment E)

⁵⁸ A.R.S. § 49-282.06.B.4.b.; A.A.C. R18-16-406.D; A.A.C. R18-16-407.E.1; ADEQ Final Remedial Objectives Report for WVBA WQARF Site (2012).

⁵⁹ Working Group Feasibility Study Report (WGFS Report), 25 (2014).

⁶⁰ *Id.* at 28. Similarly, the PRPs at OU3 of the federal M52 Site determined that "[s]tatewide aquifer protection standards ... established for drinking water protective usage [is an] ARAR for setting water quality objectives for groundwater as part of the final remedy." OU3 RI/FS Report, Table C-3 (2015).

⁶¹ ADEQ Letter to EPA (April 24, 2018).

⁶² ARS § 49-282.06.A.2.; The PRPs recognized that a "critical component of groundwater extraction is finding a beneficial end use for the treated groundwater that allows for the maximum beneficial use of the waters of the state." WGFS Report, 26. Similarly, the PRPs at OU3 of the federal M52 Site determined that an "ARAR for any final remedy must consider maximum beneficial use of the waters of the state." OU3 RI/FS Report, Table C-3 (2015).

future produce water that would not be fit for its current or reasonably foreseeable [over at least the next 100 years] end uses without treatment due to the release of hazardous substances.”⁶³

Unlike EPA’s apparent acceptance of the PRPs’ arguments, ADEQ after having “carefully analyzed technical and legal documents and correspondence contained in the Site file, including submittals by RID and other interested parties since September 2009, and comments received through the public participation process” and having “analyzed the [Early Response Action] Work Plan to determine compliance with applicable State statutes and rules,” ADEQ approved the RID ERA because “RID has a unique opportunity to increase the removal of contamination from the aquifer via its wells” and “[w]ithout treatment, these contaminants will continue to degrade the quality of the aquifer within the Site.” Similarly, the federal court rejected the PRPs’ arguments in holding that the “record indicates that RID gave substantial thought and attention to compliance with site-specific Arizona law” and that the PRPs “have not presented evidence of the existence of any other ‘significantly more cost effective permanent remedial alternative.’” In fact, as presented to ADEQ and EPA, the vast majority of groundwater cleanups in Arizona treat contaminated groundwater to applicable Arizona AWQs or federal MCLs even if currently used for an irrigation end use.⁶⁴

Conclusion

As noted in RID’s July 19, 2018 letter to EPA, it is unreasonable that EPA continues to request, as EPA did again in its September 2018 letter, that “RID should continue to ensure its activities do not exacerbate pathways for contaminant exposure,” while refusing to support RID’s efforts to expedite full implementation of the ADEQ-approved and NCP-compliant RID remedial action with private funds. If EPA would take any of the available options authorized under CERCLA or consistent with EPA’s response actions at OU1 of the federal M52 Site, RID has secured private funds to expedite full implementation of the ADEQ-approved and NCP-compliant RID remedial action in order to provide prompt and necessary protection of public health, welfare and the environment. These private funds, consistent with the purposes of CERCLA and the Superfund Task Force recommendations, will expedite efforts to address what a federal court declared is “admittedly a very serious problem” due to the “plumes of very deadly carcinogenic chemicals floating around underneath the city of Phoenix, Arizona”⁶⁵ that are attributable in significant part to releases of toxic VOCs by PRPs identified by EPA in the federal M52 Site that have contaminated RID’s wells and water supply and are being directly released into the ambient air of the local community in the adjacent, downgradient WVBA WQARF Site. The local community within the WVBA should not be exposed to the continued migration and volatilization of toxic VOCs from the federal M52 Site simply because EPA has decided either not to protect the local WVBA community to the same degree as the local communities at the federal M52 Site and the other CERCLA sites in Arizona or is simply

⁶³ A.R.S. § 49-282.06.B.4.b.; A.A.C. R18-16-406.D

⁶⁴ See summary of cleanup sites in Arizona included in ADEQ-approved RID FS Report and presented to EPA at March 13, 2018 meeting. (Attachment J)

⁶⁵ *Reporter’s Transcript of Proceedings (Motion Hearing)* at page 38, lines 14-21, *RID v. SRP*, No. CV-10-0920 (D. Ariz. Feb. 28, 2017).

unwilling to provide the needed protection to public health and the environment as required by federal law.

Unfortunately, EPA advances in its September 2018 letter the unjustifiable and government-rejected positions of PRPs to continue to delay addressing this admittedly very serious problem. It is unclear why EPA is refusing to act as authorized by statute, rule, policy and its own historical practices under CERCLA especially when EPA funds would not be needed at the WVBA WQARF Site to address the largest groundwater contaminant plume in the State of Arizona. Rarely, if ever, has EPA been presented with a groundwater remedial action already approved and determined by a state and federal court to comply with applicable state law, to substantially comply with the applicable federal NCP, to have been subject to substantial public participation and comment and that meets all applicable state and federal remedial action criteria at no cost to the federal Superfund.

We again ask for meetings with EPA leadership to discuss the contents of EPA's September 2018 letter, EPA's legal authorities under CERCLA and EPA's rationale for not supporting a prompt interim CERCLA response action at the WVBA WQARF Site with the ADEQ-approved and NCP-compliant RID groundwater remedial action to address the direct public health and environmental risks associated with the toxic VOCs that have migrated and continue to migrate from the federal M52 Site into the WVBA WQARF Site in Phoenix, Arizona.

Very truly yours,

GALLAGHER & KENNEDY, P.A.

By: 
David P. Kimball, III

DPK/sgl

cc: Andrew Wheeler, EPA Administrator
Henry Darwin, EPA COO
Steven Cook, EPA Superfund Task Force
Michael Stoker, EPA Region 9 Administrator
Deborah Jordan, EPA Region 9 Deputy Administrator
Alexis Strauss, EPA Region 9
Daniel Scarpinato, Arizona Governor's Chief of Staff
Misael Cabrera, ADEQ Director
Tom Buschatzke, ADWR Director

Attachment A



Janice K. Brewer
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • www.azdeq.gov



Henry R. Darwin
Director

February 1, 2013

RPU:13-155

Mr. Donovan L. Neese
Superintendent
Roosevelt Irrigation District
103 West Baseline Road
Buckeye, Arizona 85326

RE: Conditional Approval of RID's Modified Early Response Action Work Plan
West Van Buren WQARF Registry Site
Phoenix, Arizona

Dear Mr. Neese:

The Arizona Department of Environmental Quality (ADEQ) Remedial Projects Unit (RPS) has completed its review of the *Modified Early Response Action Work Plan* (Modified ERA Work Plan), *West Van Buren WQARF Registry Site, Phoenix, Arizona*, dated October 2012, and prepared by Synergy Environmental, LLC on behalf of the Roosevelt Irrigation District (RID). The Modified ERA Work Plan serves as a modification to RID's original Early Response Action (ERA) Work Plan dated February 3, 2010. ADEQ has reviewed the Modified ERA Work Plan only as it pertains to the objectives outlined in the Modified ERA Work Plan. Specifically, RID's objective to protect RID's supply of water and addressing current and future risks to public health, welfare, and the environment [Arizona Administrative Code (AAC) R18-16-405(A)].

Based on our analysis of available information, ADEQ conditionally approves, the October 2012 Modified ERA Work Plan. This approval supersedes ADEQ's approval of the previous ERA Work Plan dated February 3, 2010. The conditional approval is contingent upon the following:

1. RID must maintain historical pumping rates to ensure that there are no adverse impacts to groundwater quality and levels within the West Van Buren Area. Water levels must be maintained at or near current levels taking into account natural variations.
2. As stated in the Public Health Exposure Assessment and Mitigation Summary Report, prepared by Synergy Environmental, LLC and dated September 16, 2011, "there is not an imminent (acute) risk to public from the contamination being released from the RID

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water systems." However, long-term effects are uncertain and data also shows that "significant volatilization and transfer of contaminants, from the water into the air, is occurring and is ongoing." Based on these statements, RID intends to implement measures to limit these exposures. ADEQ's conditional approval is contingent on RID's implementation of these measures.

ADEQ analyzed the Modified ERA Work Plan to determine compliance with applicable State statutes and rules. ADEQ has not reviewed whether the Modified ERA Work Plan is consistent with any federal laws or regulations. ADEQ also did not review information contained in the Modified ERA Work Plan not relevant to the stated objectives. This includes, but is not limited to, the ancillary benefits from implementing the RID Modified ERA Work Plan. ADEQ agrees that these can be considered during the West Van Buren WQARF Feasibility Study. ADEQ's conditional approval also does not include an analysis or approval of the transport or final disposition and use of the treated water.

As stated, the Modified ERA Work Plan incorporates all relevant and applicable information from the original ERA Work Plan

I look forward to working with you and other parties as you begin this process. Please contact me at 602-771-4567 or llm@azdeq.gov should you have any questions.

Sincerely,



Laura L. Malone, Director
Waste Programs Division
Arizona Department of Environmental Quality

cc: Henry Darwin, ADEQ
Tina LePage, ADEQ
Andre' Chiaradia, ADEQ
Kevin Snyder, ADEQ

Attachment B

**Roosevelt Irrigation District
Groundwater Remediation Project
in the
West Van Buren Area WQARF Site**

Meeting with
U.S. Environmental Protection Agency

March 13, 2018

AGENDA

- Purpose of meeting
- History of WVBA and EPA Involvement
- Site Demographics
- Regional groundwater contaminant plume
- Timeline of RID remedial actions
 - RID Early Response Action / Modified ERA
 - RID Feasibility Study and Selected Groundwater Remedy
- NCP Compliance of RID's Remedial Actions
- Next Steps
 - Cooperative Agreement
 - Future Optimization, if appropriate

PURPOSE OF MEETING

- Brief EPA on the RID Remediation Project:
 - Regional Groundwater P&T Remedy in the West Van Buren Area WQARF Site
 - Voluntary
 - P3 Funded and Performed
 - ADEQ-approved and NCP-compliant
 - Addressing the Largest Groundwater VOC Contaminant Plume in Arizona (one of the largest in the country)
 - Geographic extension of the groundwater contamination migrating from the Motorola 52nd Street Superfund Site
- Seeking EPA administrative help – NOT MONEY

PURPOSE OF MEETING

- RID Project should be the poster-child example of EPA's new Superfund Initiative
 - Administrator Pruitt commissioned the Superfund Task Force on May 22, 2017 ... to "provide recommendations on an expedited timeframe on how the agency can restructure the cleanup process, realign incentives of all involved parties to promote expeditious remediation, reduce the burden on cooperating parties, incentivize parties to remediate sites, encourage private investment in cleanups and sites and promote the revitalization of properties across the country."
- EPA administrative help needed because of the:
 - On-going violations of applicable groundwater cleanup and water quality end use standards,
 - On-going obstruction and delay of needed remediation by PRPs, and
 - On-going social and environmental injustice for exposure of the low income, minority local community to uncontrolled releases of toxic substances

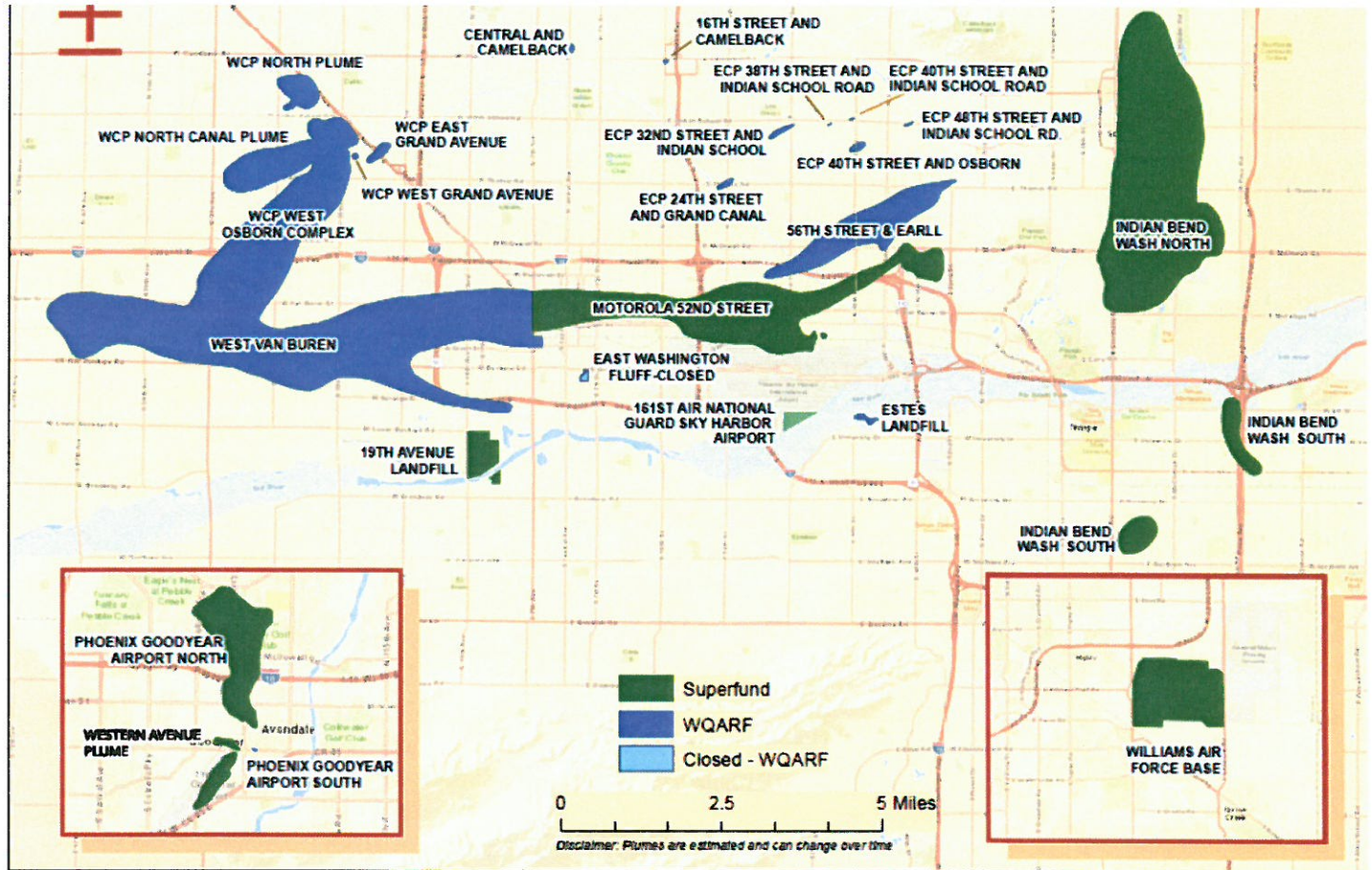
WVBA WQARF Site Timeline

Early History (1987 – 2009):

- WVBA Site listed on WQARF Registry in 1987
- Site characterization, PRP search, facility regulatory actions, and groundwater modeling
 - Over 50 Facilities investigated
- *[**WQARF Reform Legislation in 1997**]*
- Draft Remedial Investigation Report – 2008
 - Nine primary source areas identified
 - Draft RI Report finalized in 2012
- RID/ADEQ/EPA/P3 meetings – 2009
 - Potential OU4 Overfile and Gentleman's Agreement

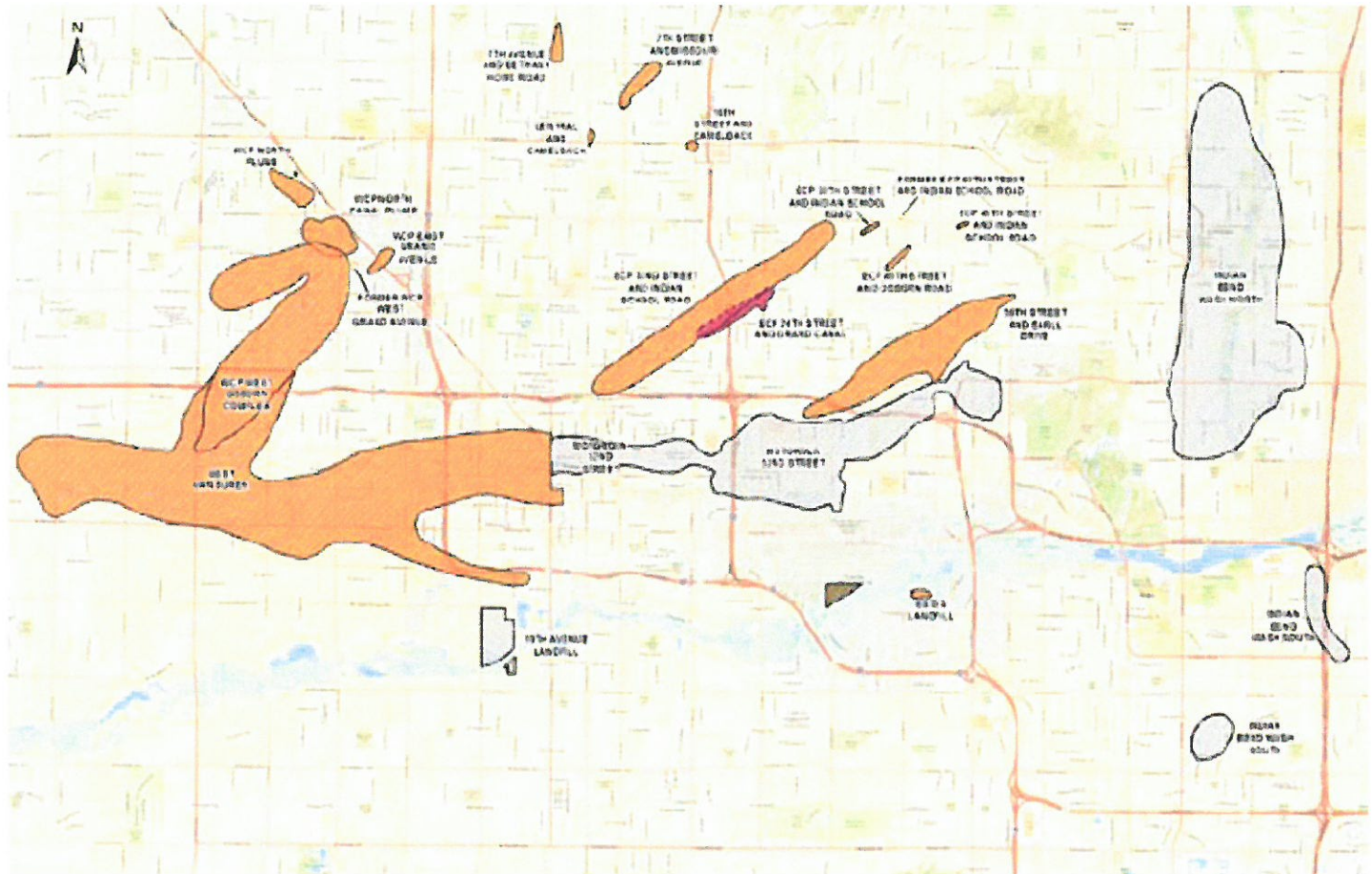
METROPOLITAN PHOENIX SITES

Source: ADEQ FY15 WQARF Annual Report



METROPOLITAN PHOENIX SITES

Source: ADEQ FY17 WQARF Annual Report



DEMOGRAPHICS (EJSCREEN)

WVBA WQARF SITE:

- 24 Square Miles
- ~ 68,000 Residents
- 88% Minority Population
- 78% Low Income
- 45% Lacking HS Education

M52 CERCLA SITE:

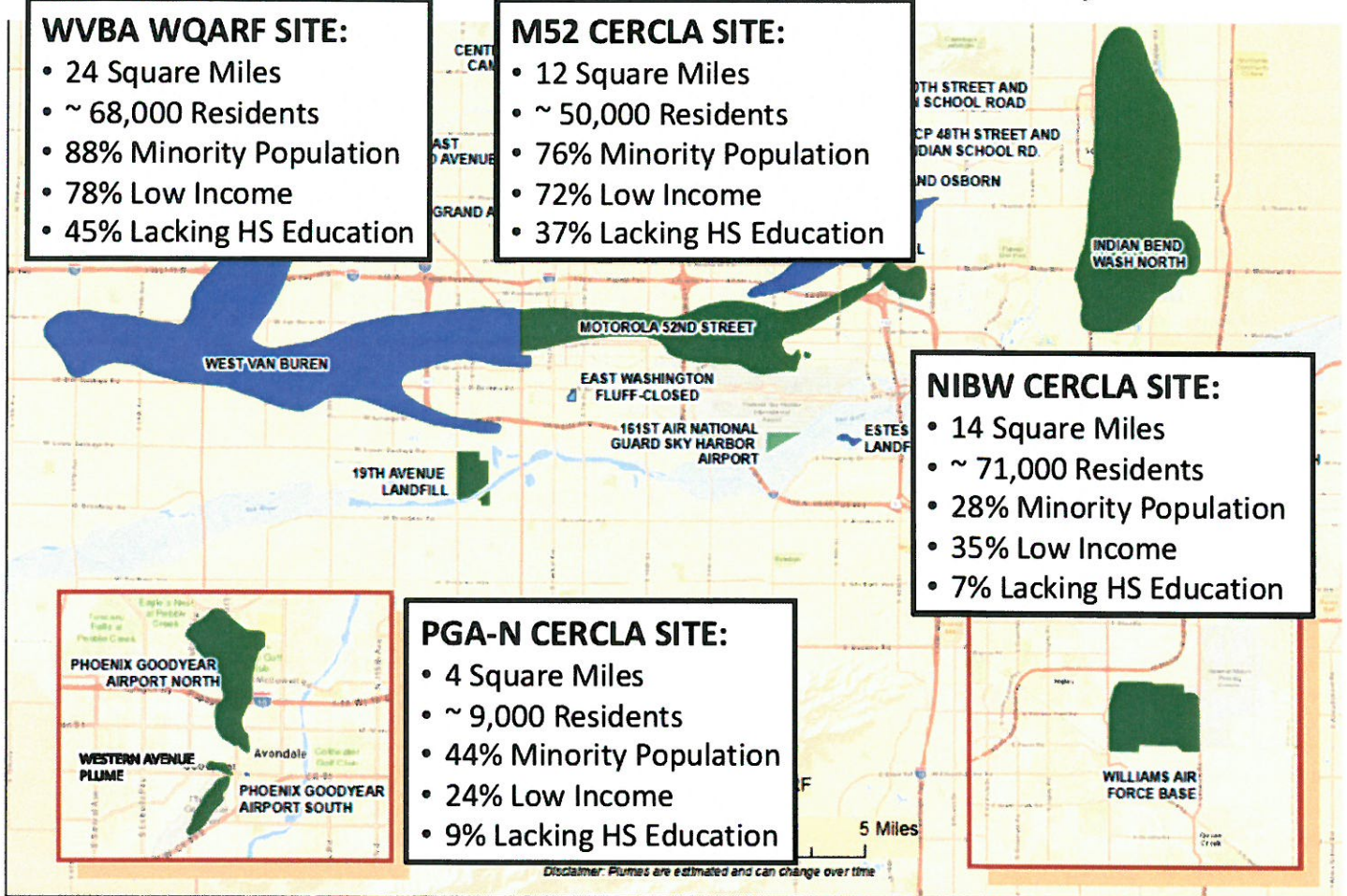
- 12 Square Miles
- ~ 50,000 Residents
- 76% Minority Population
- 72% Low Income
- 37% Lacking HS Education

NIBW CERCLA SITE:

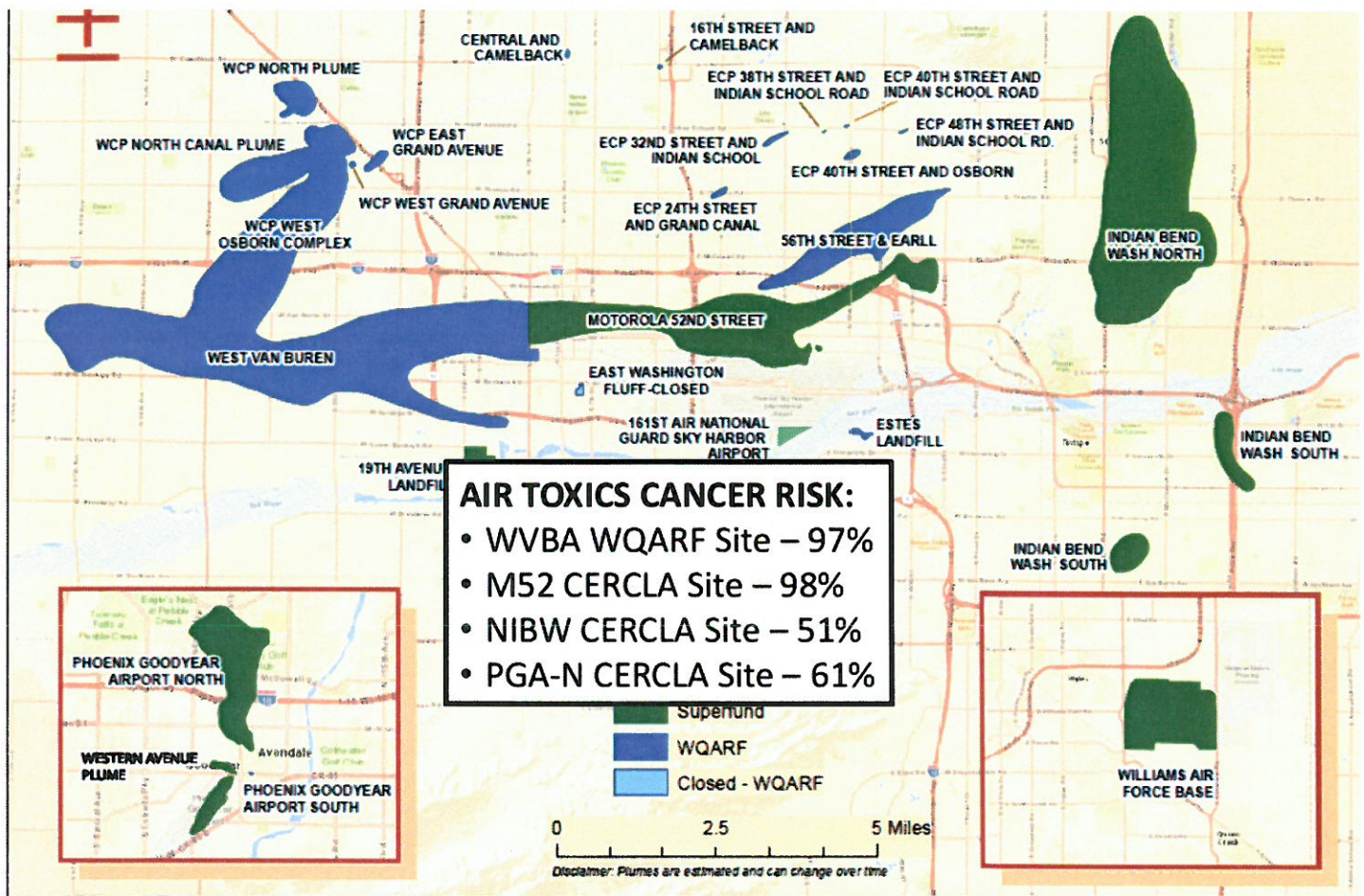
- 14 Square Miles
- ~ 71,000 Residents
- 28% Minority Population
- 35% Low Income
- 7% Lacking HS Education

PGA-N CERCLA SITE:

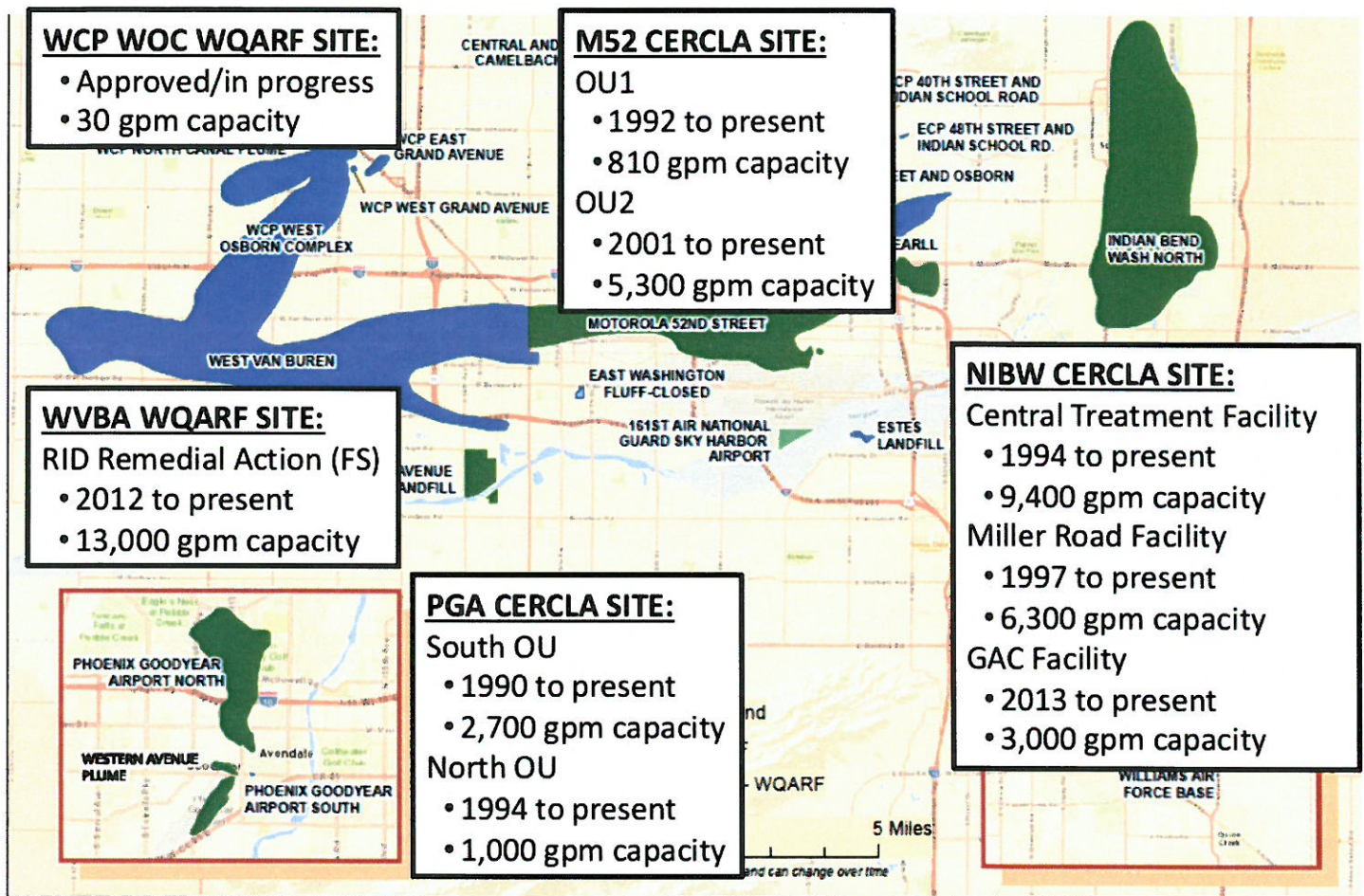
- 4 Square Miles
- ~ 9,000 Residents
- 44% Minority Population
- 24% Low Income
- 9% Lacking HS Education



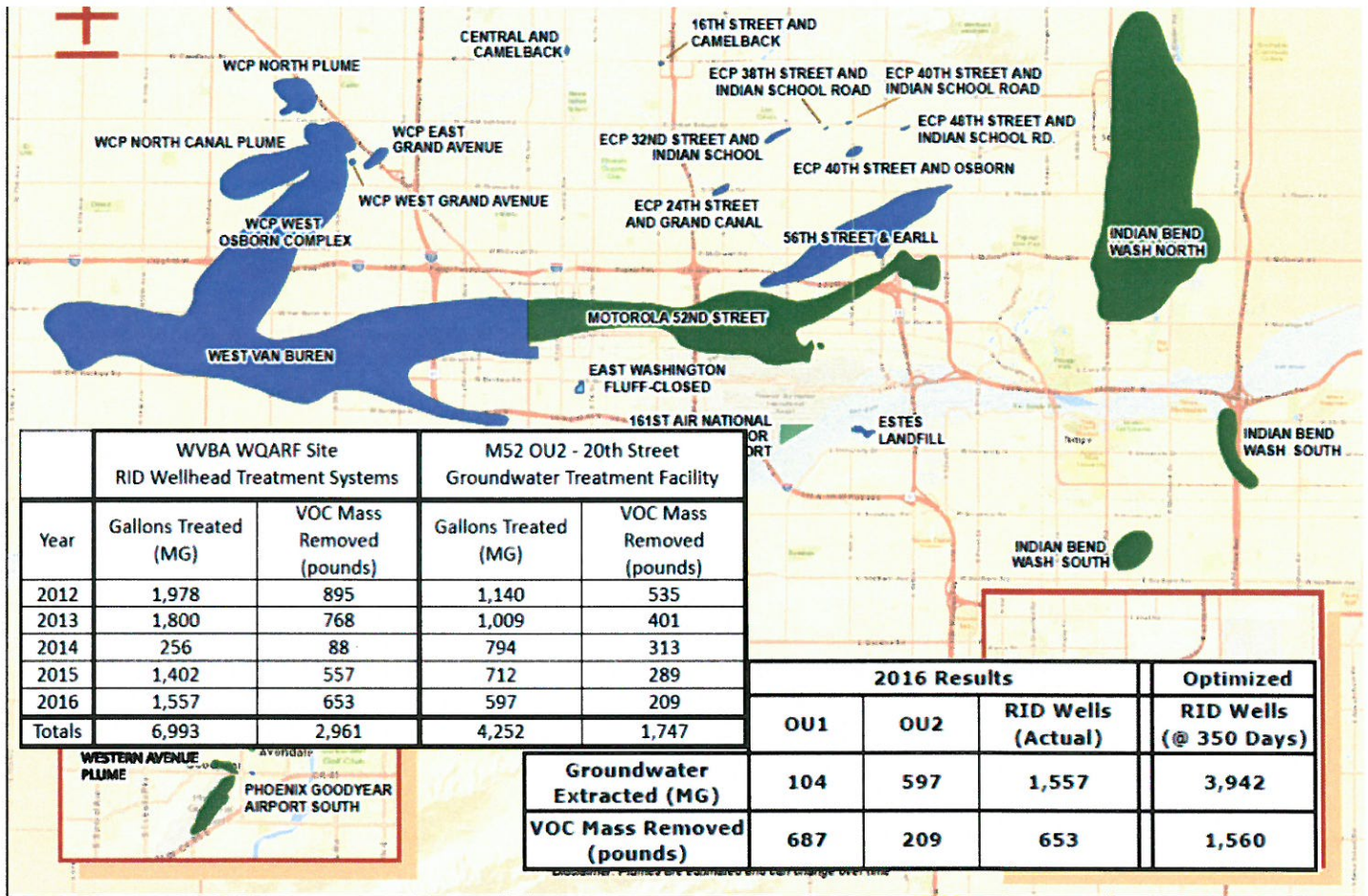
DEMOGRAPHICS (EJSCREEN)



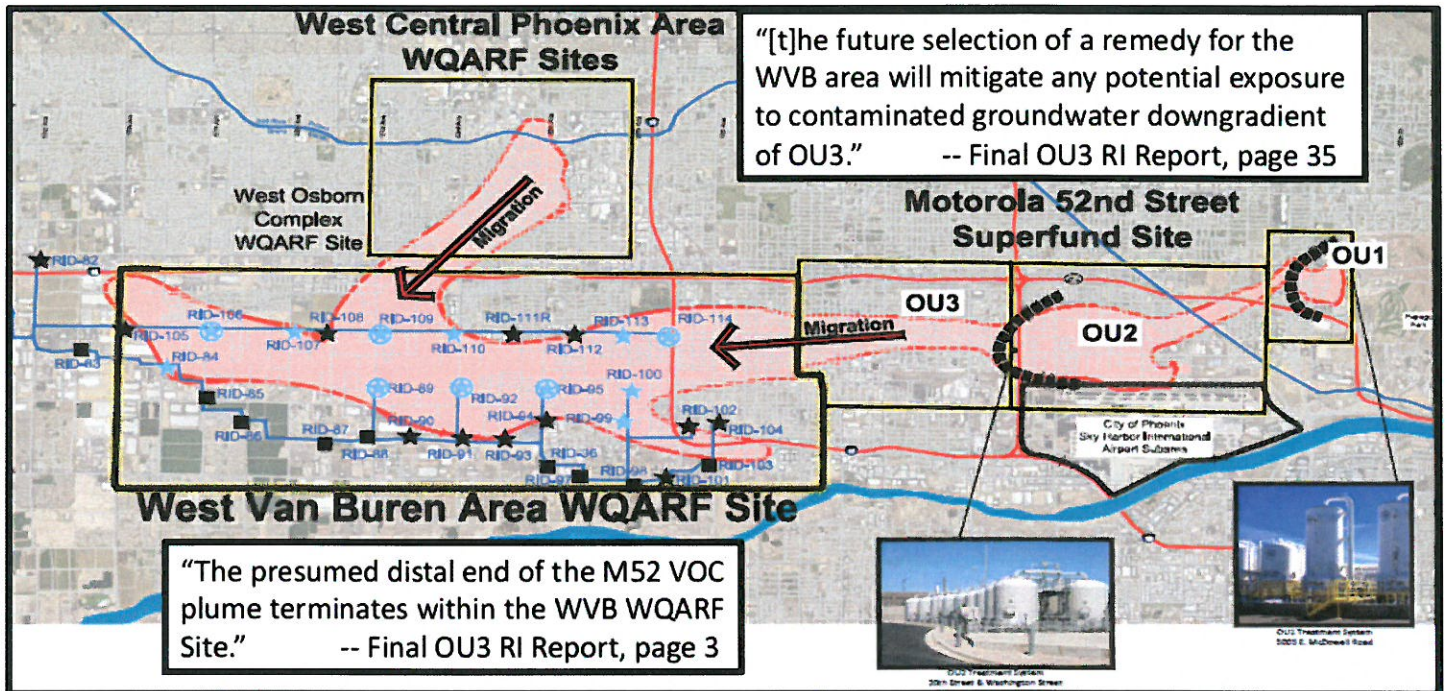
GROUNDWATER P&T REMEDIAL ACTIONS



REMEDIAL ACTION METRICS

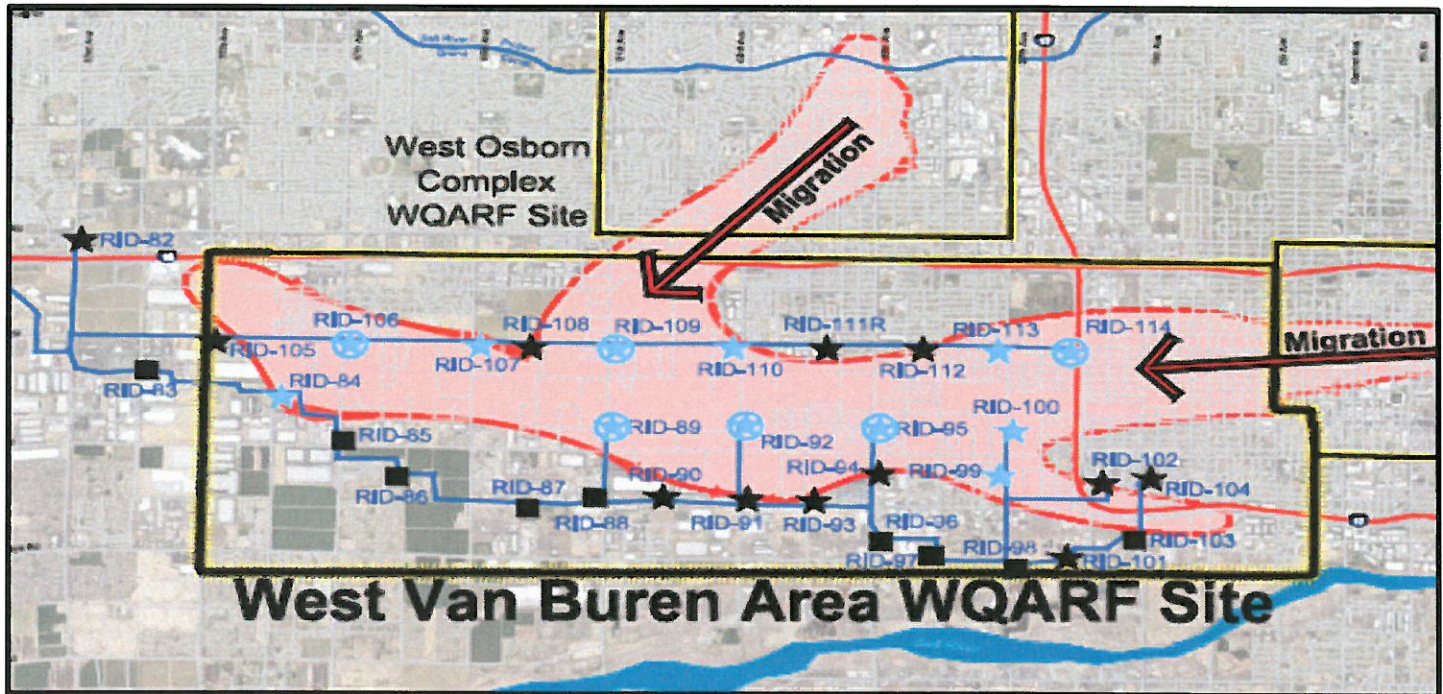


CENTRAL PHOENIX REGIONAL PLUME



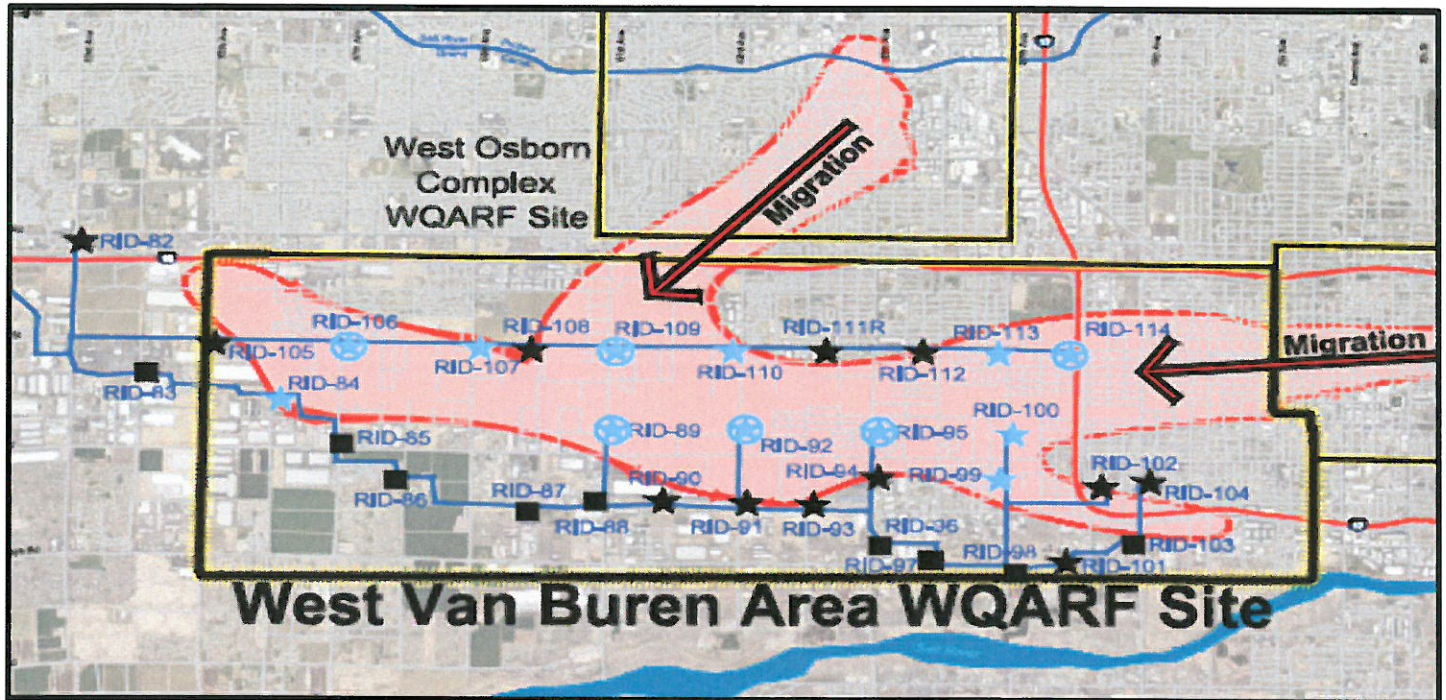
- Single, nearly 15-mile long commingled plume originating from numerous, widespread VOC releases within 3 separate “Superfund” sites
- VOC contamination generally limited to shallow (UAU) groundwater system
- RID pumping creates regional hydraulic trough or sink within the WVBA Site, resulting in area-wide hydraulic control of the shallow groundwater system (See Feasibility Study Report prepared by the West Van Buren Working Group, December 2015)

DEGREE OF WVBA CONTAMINATION



- Upper Alluvial Unit (UAU1)
 - Up to 68 ppb TCE and 84 ppb PCE
 - Concentrations declining
- Upper Alluvial Unit (UAU2)
 - Up to 189 ppb TCE and 12 ppb PCE
 - Concentrations steady
- Middle Alluvial Unit (upper MAU) – not well defined

RID OPERATIONS IN WVBA SITE



- RID operates 33 wells in WVBA Site vicinity; pump ~ 80,000 acre-feet per year
- At least 23 RID wells impacted by VOCs with 12 wells exceeding TCE and/or PCE MCLs ... with up to 92 ppb TCE and 21 ppb PCE
- RID conveys water in Salt and Main Canal to Goodyear and Buckeye; for irrigation & future M&I uses

RID'S VOLUNTARY REMEDIAL ACTIONS

- RID Agreement to Conduct Work (2009)
- RID Early Response Action (2010)
- RID Wellhead Treatment Pilot Proposal (2011)
- RID Installs LGAC Treatment Systems at 4 wells (2012)
- RID Modified Early Response Action (2012)
- RID Feasibility Study Work Plan (2013)
- RID Feasibility Study Report (2014)
- RID Proposed Remedial Action Plan (2015, later withdrawn at ADEQ's request)
- RID Requests for Funding Options (2016-2017)
 - ADEQ (Orphan Share, Reimbursement, Cost Sharing)
 - Private Funds (Secured but no government assurance of right to implement ADEQ-approved remedial action)
 - EPA (oversight or funds)

ADEQ APPROVALS OF RID WORK

KEY WORK PRODUCTS:

- **Agreement to Conduct Work – ADEQ execution on October 9, 2009**
 - “ADEQ has determined that releases or threatened releases of hazardous substances have occurred ... resulting in groundwater contamination that impacted multiple RID water supply wells which may present an imminent and substantial endangerment to the public health, welfare, or the environment.”
 - “Parties desire that RID conduct the ERA and FS (collectively the ‘Work’)”
 - “RID agrees to conduct all Work under the approved Plan. ... All Work conducted by RID shall be performed in accordance with rules adopted under A.R.S. § 49-282.06.”

ADEQ APPROVALS OF RID WORK

- **ERA Work Plan** – ADEQ approval on June 24, 2010
 - ADEQ “has reviewed ... the ERA Work Plan. The Work Plan summarizes technical information regarding the Site, provides justification for an ERA, and describes an ERA remedy designed to remediate contaminated groundwater within the Site.”
 - “In addition to the ERA Work Plan, ADEQ has also carefully analyzed technical and legal documents and correspondence contained in the State file, including submittals by RID and other interested parties since September 2009, and comments received through the public participation process.”
 - “RID has a unique opportunity to increase the removal of contamination from the aquifer via its wells ... [and] [w]ithout treatment, these contaminants will continue to degrade the quality of the aquifer within the Site.”
 - The ERA will “maximize the benefit of pumping and treating contaminated groundwater within the Site, which is intended to result in aquifer restoration and reduce the cost of the final remedy.”
 - “ADEQ analyzed the ERA Work Plan to determine compliance with applicable state statutes and rules.”

ADEQ APPROVALS (cont.)

- **Wellhead Treatment System Pilot Proposal** – ADEQ approval on Sept. 2, 2011
 - The work is “being undertaken to determine whether well head treatment can be an effective treatment technology ... [to reduce] the costs of the final remedy ... and/or mitigating contaminant exposure.”
 - “ADEQ concurs that the implementation of the work plan may yield data justifying a modification to the ERA, and therefore agrees to its implementation.”
- **Modified ERA Work Plan** – ADEQ approval on Feb. 1, 2013
 - “ADEQ has reviewed the Modified ERA Work Plan only as it pertains to the objectives ... to protect RID’s supply of water and addressing current and future risks to public health, welfare, and the environment.”
 - “ADEQ conditionally approves the October 2012 Modified ERA Work Plan [and] this approval supersedes ADEQ’s approval of the previous ERA Work Plan.”
 - “ADEQ’s conditional approval is contingent on RID’s implementation of ... measures to limit these exposures” from volatilization of hazardous VOCs since the “long-term effects are uncertain and data also shows that ... ‘significant volatilization and transfer of contaminants, from water into the air, is occurring and ongoing.’”
- **Feasibility Study Work Plan** – ADEQ approval on July 6, 2013

ADEQ APPROVALS (cont.)

- **Wellhead Treatment System O&M Plan** – ADEQ approval in April 2015; most recent version approved in Feb. 2016
- **Revised Draft Feasibility Study Report** – ADEQ approval on April 13, 2015
 - “ADEQ has determined that the FS Report meets the requirements of Arizona Revised Statutes 49-287.03 and Arizona Administrative Code R-18-16-407.”
 - “... because competing State-wide budget priorities have resulted in continued underfunding of WQARF, ADEQ will be discontinuing all discretionary work on the WVB WQARF Site at this time.”
- **WQARF Reimbursement** – ADEQ approval in FYs 2013-2015 for a total of more than \$600,000
 - ADEQ reimbursed RID “for its reasonable, necessary and cost-effective remedial action costs that were incurred in response to a release or threat of a release of a hazardous substance ... that presents an immediate and substantial endangerment to the public health or environment.”

RID EARLY RESPONSE ACTION

Original ERA Work Plan – As Approved

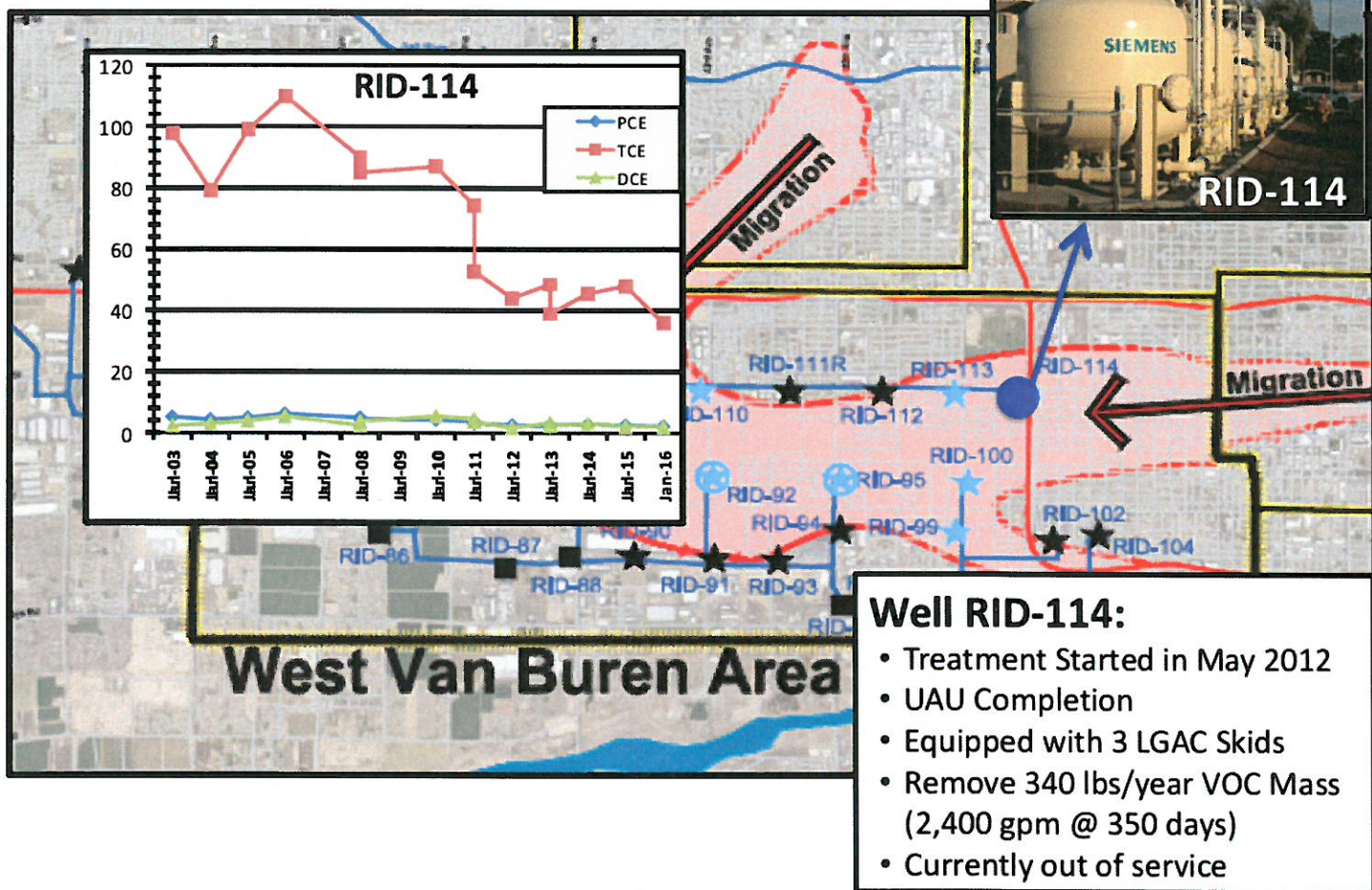
- A new priority pumping regimen for the RID wellfield to maximize removal of hazardous substances from the groundwater while maintaining current annual groundwater withdrawal
- Address the 10 most highly contaminated RID wells to remove thousands of pounds of VOCs from the groundwater annually
- Construction of a new centralized treatment facility to reliably remove VOCs and reduce their concentrations to meet standards applicable for all beneficial uses.
- Physical improvements to selected RID wells and canals to reduce emission of VOCs from water to air and to reduce exposure to VOCs
- Discharge of treated water to the RID Main Canal for irrigation use or to a new pipeline for potable use.

RID EARLY RESPONSE ACTION

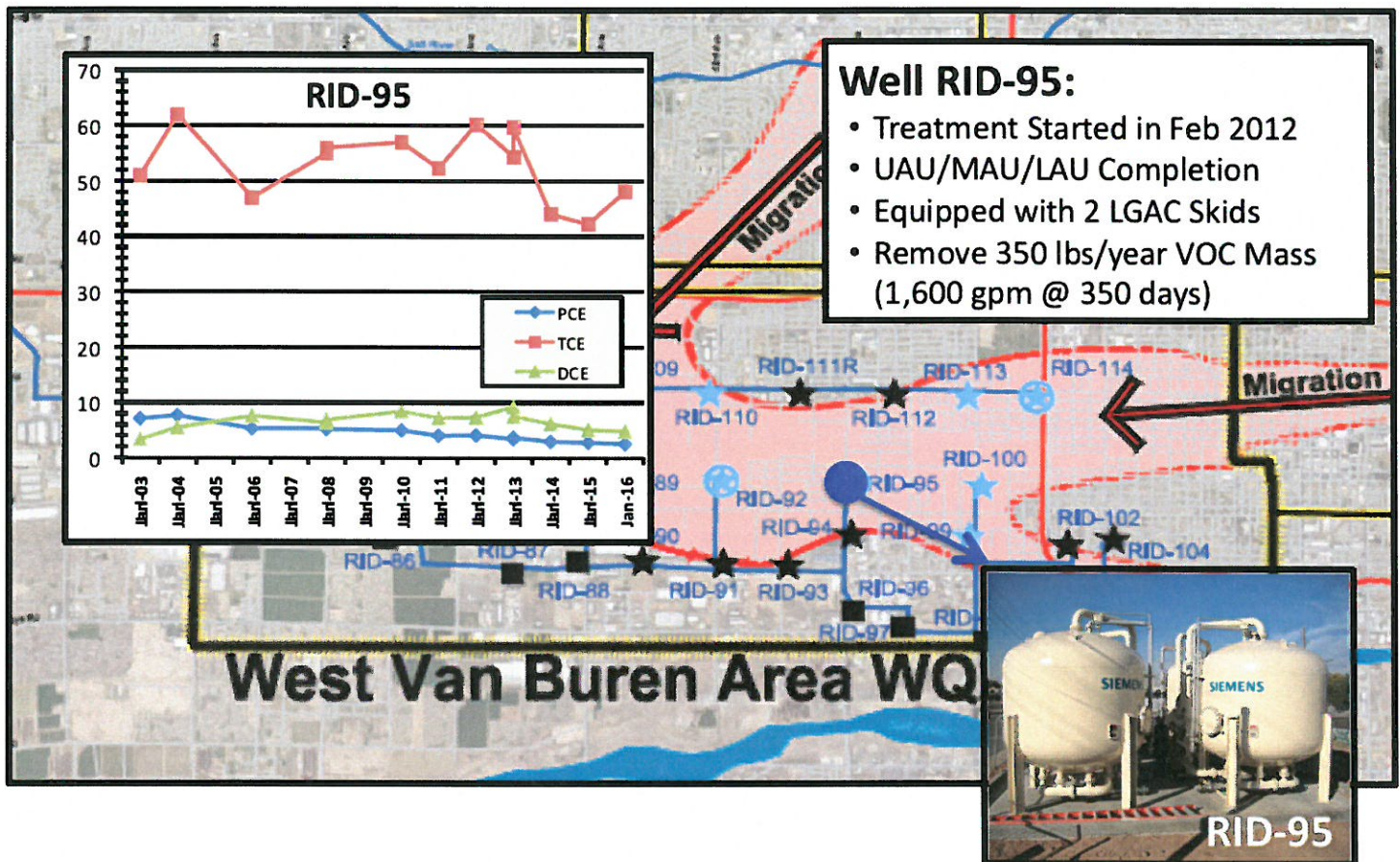
“Modified” ERA Work Plan – As Approved

- Utilizes wellhead treatment systems with LGAC at 8 most highly contaminated RID wells in lieu of the central water treatment facility
- Eliminates lateral pipelines to connect southern tier wells and the Salt Canal
- Utilizes a combination of treatment and blending to effectively reduce the concentration of VOCs from several additional wells with lower contaminant concentrations, resulting in lower volume of contaminated water being directly treated while ensuring RID water supplies meet applicable MCLs to ensure protection of all current and reasonably foreseeable end uses
- Reduces capital and O&M costs by 50%

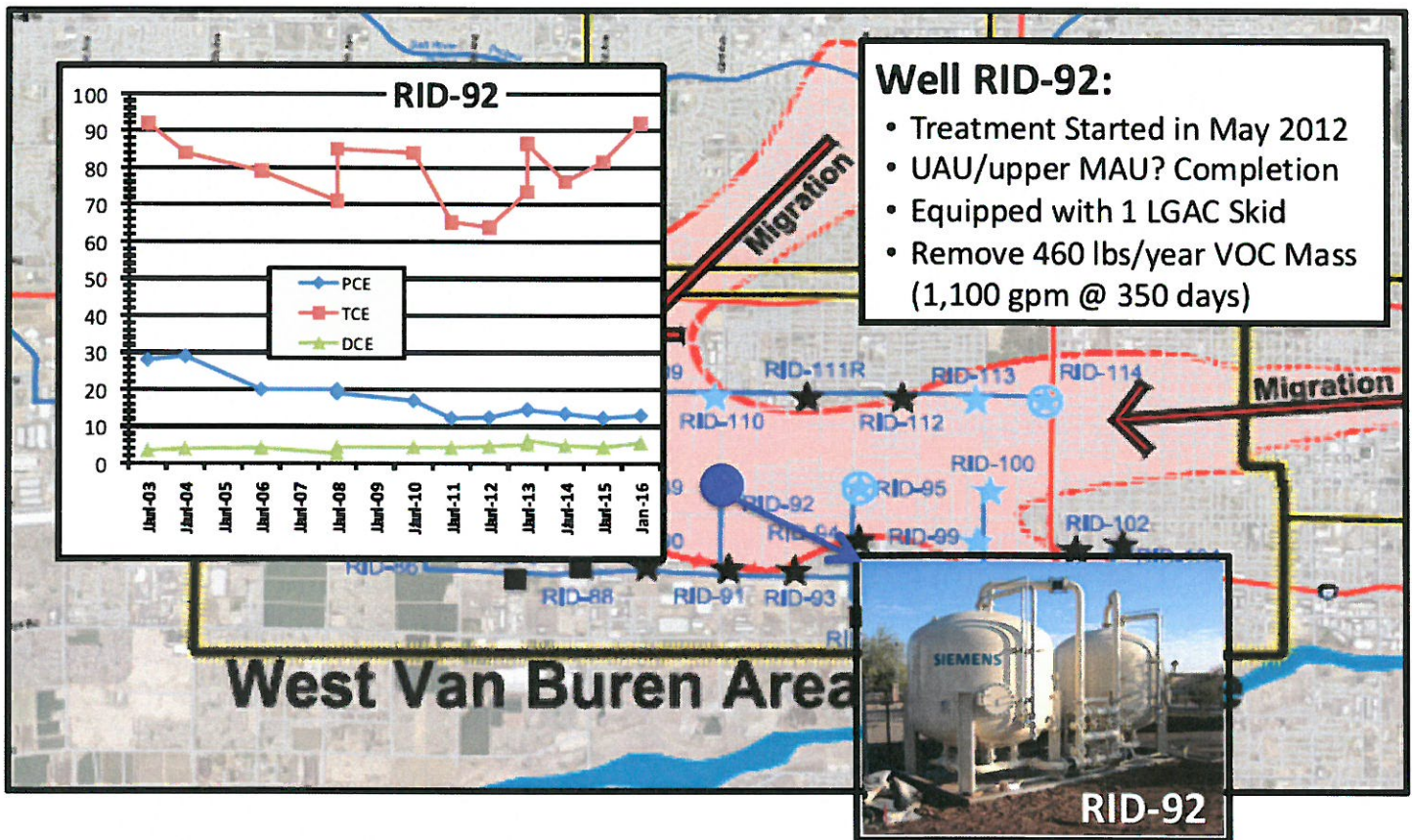
RID EARLY RESPONSE ACTION



RID EARLY RESPONSE ACTION



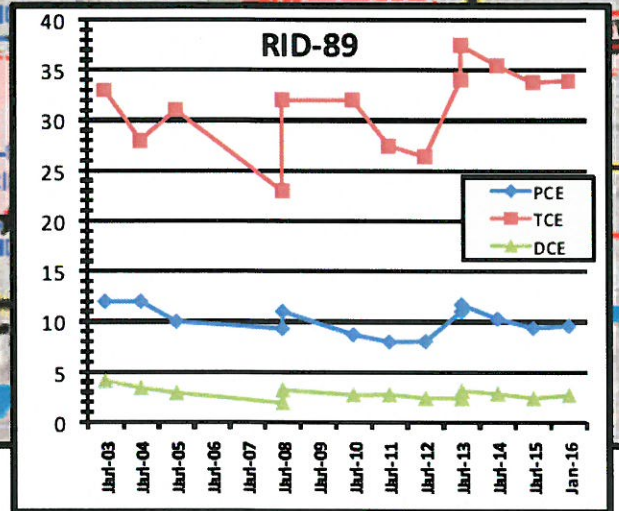
RID EARLY RESPONSE ACTION



RID EARLY RESPONSE ACTION

Well RID-89:

- Treatment Started in May 2012
- UAU/MAU/LAU Completion
- Equipped with 3 LGAC Skids
- Remove 400 lbs/year VOC Mass (2,400 gpm @ 350 days)



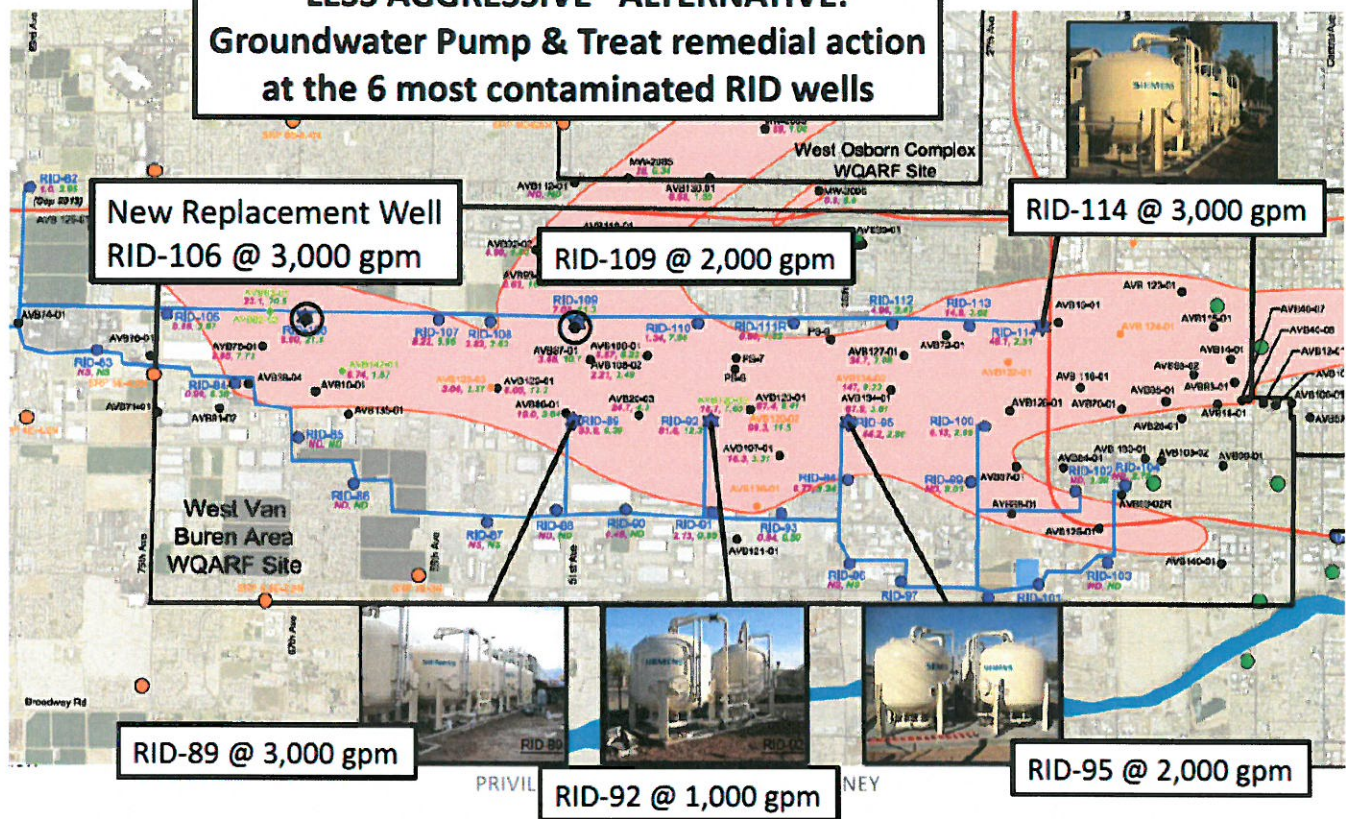
RID FEASIBILITY STUDY REPORT

Feasibility Study Report – As Approved

- Updated ADEQ Central Phoenix Plume Model applied to comparative analysis of remedial alternative
- Four Remedial Alternatives Evaluated:
 - Reference Remedy** – treatment at 9 RID well sites with blending to address other impacted wells; 2 replacement wells
 - Less Aggressive Alternative** – treatment at 6 RID well sites with blending to address other impacted wells; 1 replacement well
 - More Aggressive Alternative** – treatment at 6 RID well sites with blending and re-injection to address other impacted wells; 1 replacement well
 - Most Aggressive Alternative** – treatment at all 12 RID well sites exceeding MCLs; 2 replacement wells
- Less Aggressive Alternative was selected remedy
 - \$9.4 Million – Capital Cost
 - \$2.0 Million – Annual O&M

ADEQ-Approved FS Remedial Action

**"LESS AGGRESSIVE" ALTERNATIVE:
Groundwater Pump & Treat remedial action
at the 6 most contaminated RID wells**



RID COMPLIANCE WITH NCP

- **Reasonable, necessary and cost-effective course of action to protect public health and the environment**
 - ADEQ approvals determined RID remedial actions to be “reasonable, necessary and cost-effective”
 - RID remedial actions meet applicable state water quality standards and USEPA maximum contaminant levels (MCLs) that are exceeded at WVBA Site and RID’s water supply wells
 - RID remedial actions utilize reliable LGAC treatment for VOCs
 - RID remedial actions are more cost-effective than other Arizona VOC-contaminated groundwater cleanups (See attached comparison chart)
- **Provide public information and community input**
 - RID prepared and submitted at least 70 letters, responding to 37 ADEQ letters and/or requests and 114 PRP communications and/or work products
 - RID attended at least 45 meetings with ADEQ
 - RID attended at least 73 meetings with other stakeholders (e.g. CAB, ADWR, PRPs, elected officials, water providers, cities, etc)

RID COMPLIANCE WITH NCP (cont.)

- **Evaluation of the health and environmental threat**
 - RID remedial actions prevent exposure to groundwater containing COCs exceeding USEPA MCLs
 - RID remedial actions contain and capture groundwater containing COCs exceeding MCLs
 - RID remedial actions restore aquifer to beneficial use, which is potable water
- **Evaluate alternatives to achieve remedial objectives**
 - ADEQ approval determined that RID's FS Report complied with the requirements of ARS § 49-287.03 and AAC R-18-16-407
- **Comply with all ARARs**
 - RID remedial actions achieve ADEQ's remedial action criteria in A.R.S. § 49-282.06.A-B (See attached WQARF/ Superfund comparison charts)

U.S. DISTRICT COURT'S SUMMARY JUDGMENT

Compliance with NCP:

- "RID was able to meet its burden of providing evidence that it substantially complied with CERCLA."
- "In considering RID's overall methods, however, the Court finds that 'while certainly not in perfect compliance,' RID did as a matter of law substantially comply with the applicable requirements set forth in the NCP."

Compliance with Public Participation:

- "RID has demonstrated that it engaged in an extensive public vetting process of its ERA and MERA proposals, and that Defendants themselves participated in this process."

Compliance with ARARs:

- "The record indicates that RID gave substantial thought and attention to compliance with site-specific Arizona law."

U.S. DISTRICT JUDGE'S STATEMENTS

Remediation is Necessary:

- “It ... astounds me, to be honest with you, as to why the public entities here didn't step up more forcefully on all bases to do something about what is admittedly a very serious problem.”
- “I don't think anybody disagrees, or if they do, I don't know on what basis they could possibly suggest that there aren't plumes of very deadly carcinogenic chemicals floating around underneath the city of Phoenix, Arizona.”

RID Remedial Actions are Cost-Effective:

- “Defendants have not presented evidence of the existence of any other 'significantly more cost effective permanent remedial alternative'”

Next Steps

- Cooperative Agreement to accelerate implementation of NCP-Compliant and ADEQ-approved remedial action
- Future optimization of NCP-Compliant and ADEQ-approved remedial action, if appropriate

Cooperative Agreement with RID to Implement NCP-Compliant and ADEQ-approved P&T Remedial Action

- “A State or political subdivision thereof ... may apply to the President to carry out actions authorized in this section.” 42 U.S.C. § 9604(d)(1)(A)
- “Whenever any hazardous substance is released or there is a substantial threat of release into the environment ... which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, ... and provide for remedial action relating to such hazardous substance ... or take any other response measure consistent with the [NCP] which the President deems necessary to protect the public health or welfare or the environment.” 42 U.S.C. § 9604(a)(1)
- “When the President determines that such action will be done properly and promptly by the owner or operator of the facility ... the President may allow such person to carry out the action.” 42 U.S.C. § 9604(a)(1)
- “[T]he President may respond to any releases or threat of release if in the President’s discretion, it constitutes a public health or environmental emergency and no other person with the authority and capability to respond to the emergency will do so in a timely manner.” 42 U.S.C. § 9604(a)(4)

COOPERATIVE AGREEMENT COMPLIES WITH NEW SUPERFUND INITIATIVE

- Promotes expeditious remediation of Arizona's largest groundwater contaminant plume and one of the largest in the country
- Reduces the burden on cooperating parties
- Incentivizes parties to remediate site
- Encourages private investment in cleanups
- Avoids Environmental Justice issues with local minority community
- Promotes economic development with remediated water
- Avoids EPA Superfund expenditures/costs

Arizona and ADEQ Unable to Respond to WVBA Contamination

- Despite ADEQ's position that "the State of Arizona will no longer accept delays at the [WVB Site]" and requires a "remedial action plan that is comprehensive and covers all activities necessary to conduct a final regional remedy for the WVB Site," Arizona and ADEQ have no money for the WVBA Site
 - "... because competing State-wide budget priorities have resulted in continued underfunding of WQARF, ADEQ will be discontinuing all discretionary work on the WVB WQARF Site at this time." (April 2015)
 - ADEQ current budget is \$0 for the WVBA Site
 - Governor's current budget will discontinue General Fund support for the WQARF program.

Arizona Refuses to Provide Certainty for the RID Remedial Actions to be Implemented with Private Funds

- The Arizona Department of Water Resources (ADWR) has stated that no Poor Quality Groundwater Withdrawal Permit (PQGWP) will be issued at WVBA Site (unlike virtually all groundwater cleanups in Arizona)
- Although ADWR acknowledged in June 2017 that no PQGWP is necessary because of RID's existing water rights, the current ADWR Director is unwilling to confirm RID's water rights to implement duration of remedy
 - Former ADWR Director noted that "the Department concurs that RID has the ability to deliver the remediated groundwater to non-irrigation customers within its service area [and] [b]ecause RID was in existence and engaged in the withdrawal, delivery and distribution of groundwater as of January 1, 1977, it has the right to withdraw and transport groundwater to landowners within its service area, which may include new non-irrigation customers." (ADWR's November 7, 2011 letter)
 - ADWR "determined that the duration of the [RID-SRP] agreement would not affect the legal availability of the groundwater for purposes of [Assured Water Supply] determinations." (ADWR's October 21, 2013 letter)
- Current ADWR Director revoked ADWR's October 21, 2013 letter and granted a PRP the ability to veto any clarification letter
 - ADWR's draft clarification letter reaffirmed its October 21, 2013 determination because it "was based on ADWR's reading of the face of the agreements, and the fact ADWR did not see an expiration date in the most recent agreement."
 - Although ADWR rejected that PRP's effort to draft ADWR's response, ADWR's legal counsel noted that no clarification letter would be forthcoming without that PRP's approval

*Current ADWR Director actively opposed the RID remedial actions while employed for the City of Phoenix. Although the current Director was the supervisor for Mr. Craddock, the ADWR staffer that signed the October 21, 2013 letter, the ADWR Director personally revoked that letter on March 31, 2015 in response to a February 18, 2014 letter from the PRP to Mr. Craddock.

** The former ADWR Director was requested by the outgoing Governor's Chief of Staff in 2014 to revoke the October 21, 2013 letter in front of Henry Darwin, then the ADEQ Director. The former ADWR Director and Henry Darwin were targeted during the change in administrations for their actions relating to the RID remedial actions.

FUTURE OPTIMIZATION, IF APPROPRIATE

- Potential for additional cost savings and accelerating full implementation;
- Enhance plume containment of the leading, downgradient extent of the plume;
- Enhance mass removal and aquifer restoration by focused extraction from the most highly contaminated central core of the contaminant plume; and
- Address additional contaminants not presently identified as WVBA COCs

Attachment C



Janice K. Brewer
Governor

ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

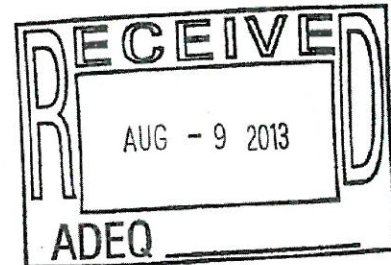
1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • www.azdeq.gov



Henry R. Darwin
Director

August 7, 2013

Mr. Donovan Neese
Roosevelt Irrigation District
103 West Baseline Road
Buckeye, Arizona 85326



Re: Request for Reimbursement

Dear Mr. Neese:

In accordance with A.R.S. §49-282.E.11, Roosevelt Irrigation District (RID) requested reimbursement from the Water Quality Assurance Revolving Fund (WQARF) for remedial actions undertaken in response to a release or a threat of a release of hazardous substances or pollutants that presents an imminent and substantial endangerment to the public health or the environment. A.R.S. §49-282.E.11 allows the Arizona Department of Environmental Quality (ADEQ) to reimburse up to \$250,000 in any given year.

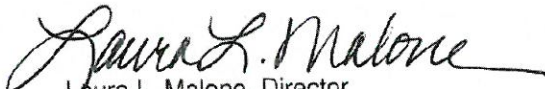
RID provided ADEQ with substantial documentation to support their claim. RID's documentation totaled incurred costs of \$359,895.00. ADEQ has reviewed the information provided and has determined that the documentation supports the work performed at the site in response to contamination that has impacted RID's well field.


In accordance with §49-282.E.11, ADEQ has determined the following:

- RID is a political subdivision
- Remedial costs were reasonable, necessary and cost-effective.
- Actions were taken in response to a release or threat of a release of a hazardous substance or pollutant and that release or threat of a release presents an imminent and substantial endangerment to the public health or environment.
- RID has taken all reasonable efforts to obtain reimbursement from responsible parties and the federal government

Therefore, ADEQ has included a reimbursement check in the amount of \$250,000. As a condition of reimbursement, ADEQ is requesting that should RID recover monies in excess of \$250,000 from responsible parties via litigation, for incurred costs that were the basis of ADEQ's reimbursement, that RID will in turn reimburse WQARF the full \$250,000. By co-signing this letter, RID is agreeing to this provision.

Sincerely,


Laura L. Malone, Director
Waste Programs Division


Donovan L. Neese, Superintendent
Roosevelt Irrigation District

Enc.: Reimbursement Check

Southern Regional Office
400 West Congress Street • Suite 433 • Tucson, AZ 85701
(520) 628-6733

Printed on recycled paper



WATER QUALITY ASSURANCE REVOLVING FUND (WQARF) POLITICAL SUBDIVISION REIMBURSEMENT CHECKLIST	APPLICANT:	ROOSEVELT IRRIGATION DISTRICT
	SUBMITTAL DATE:	5/30/2014
	REVIEW DATE:	6/18- 7/11/2014
	REVIEWED BY:	T. LE PAGE

BASED UPON INFORMATION PROVIDED BY APPLICANT, HAS THE FOLLOWING CRITERIA BEEN MET?		
Is applicant a political subdivision?	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Has applicant taken all reasonable efforts to obtain reimbursement from the responsible party?	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Has applicant taken all reasonable efforts to obtain reimbursement from the federal government?	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Are the remedial actions reasonable, necessary and cost effective [A.R.S. 282.06(A)(3)]?	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Does the release or threatened release of the hazardous substance or pollutant present an immediate and substantial endangerment to the public health or the environment?	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
Were claimed remedial actions cost incurred within current fiscal year?	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
IF ANY OF THE ABOVE QUESTIONS HAVE BEEN ANSWERED WITH "NO" - NECESSARY CRITERIA FOR REIMBURSEMENT HAS NOT BEEN MET - STOP REVIEW OF PACKET		

REIMBURSEMENT APPLICATION:		
yes	Completed Application (Signed and Notarized)	
yes	Costs Incurred Invoices Attached	
yes	Adequate Invoice Backup Attached	
yes	Reimbursement of Remedial Action Costs Spreadsheet Completed (attached)	
yes	Additional Information Needed to Complete Submittal (see attached email) - only able to reimburse documented labor from email dated 6/23/2014 for T. Blood. Warranty costs not reimbursed (see Remedial Action Costs Spreadsheet).	
YES	Applicant Notified of Submittal Deficiencies?	Date: 6/18/2014

REIMBURSEMENT AMOUNT:	
Total Amount Submitted for Reimbursement:	Amount Approved for Reimbursement:
\$288,814.57	\$232,535.49

Pay amount Remaining
 on Purchase Order
 = \$178,635.77 ✓

T. Le Page
 7/1/14

Attachment D



Janice K. Brewer
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • www.azdeq.gov



Benjamin H. Grumbles
Director

June 24, 2010

Mr. Stanley H. Ashby
Superintendent
Roosevelt Irrigation District
103 W. Baseline Road
Buckeye, AZ 85326

Re: Conditional Approval of a Water Quality Assurance Revolving Fund (WQARF) Early Response Action (ERA) Work Plan for the West Van Buren Registry Site

Dear Mr. Ashby:

The Arizona Department of Environmental Quality (ADEQ) has reviewed the Roosevelt Irrigation District (RID) ERA Work Plan for the West Van Buren WQARF Registry Site (the Site) dated February 3, 2010. The Work Plan summarizes technical information regarding the Site, provides justification for an ERA, and describes an ERA remedy designed to remediate contaminated groundwater within the Site. In addition to the ERA Work Plan, ADEQ has also carefully analyzed technical and legal documents and correspondence contained in the Site file, including submittals by RID and other interested parties since September 2009, and comments received through the public participation process.

Based on our analysis of all available information, ADEQ conditionally approves, the February 3, 2010 ERA Work Plan. The attached matrix identifies specific conditions, tasks and outcomes that must be achieved to maintain the conditional approval. RID has a unique opportunity to increase the removal of contamination from the aquifer via its wells by analyzing and potentially modifying existing well screen intervals and pumping rates. Without treatment, these contaminants will continue to degrade the quality of the aquifer within the Site. The conditions ADEQ is placing on this approval will ensure that the ERA maximizes the benefit of pumping and treating contaminated groundwater within the Site, which is intended to result in aquifer restoration and reduce the cost of the final remedy.

ADEQ reserves the right to identify additional conditions as new information becomes available throughout ERA implementation. In addition, RID shall submit all information and take all action required by A.A.C. R18-16-405(H), 404, 411, 412, 413 and A.R.S. § 49-282.06(A). The information and actions required by these provisions include, but are not limited to, community involvement, the submittal of design and engineering plans for the ERA, and addressing unknown or changed conditions during implementation of the ERA.

Northern Regional Office
1801 W. Route 66 • Suite 117 • Flagstaff, AZ 86001
(928) 779-0313

Southern Regional Office
400 West Congress Street • Suite 433 • Tucson, AZ 85701
(520) 628-6733

ADEQ analyzed the ERA Work Plan to determine compliance with applicable State statutes and rules. ADEQ has not reviewed whether the ERA Work Plan is consistent with any federal laws or regulations. In addition, ADEQ's review and conditional approval of the ERA is limited only to those activities expressly described within the ERA related to the extraction and treatment of contaminated groundwater within the Site. ADEQ's conditional approval does not include an analysis or approval of the transport or final disposition and use of the treated water.

Until information about a final remedy is developed, ADEQ cannot estimate the cost of the final remedy and each responsible party's proportionate share of liability. As a result, ADEQ will not provide any covenants not to sue or contribution protection for WQARF liability in a settlement, until we have enough information about the final remedy to determine the impact of the settlement on funding of the final remedy.

We look forward to working with you and other interested parties as you begin to implement the ERA. Please contact Amanda Stone, Director of the Waste Programs Division at (602) 771-4567 if you wish to discuss the technical aspects of this conditional approval.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Grumbles", with a long horizontal flourish extending to the right.

Benjamin H. Grumbles
Director

Attachment (1)

cc: Herb Guenther, Arizona Department of Water Resources

Approval of the proposed RID ERA is made with the following conditions that must be met within the time periods identified below, or within another time period approved by ADEQ. All work plans required by this conditional approval must be submitted to ADEQ for approval prior to implementation, and must include a schedule for performing all tasks identified in the work plan. Once a work plan is approved by ADEQ, all tasks within the work plan must be completed in accordance with the schedule in the approved work plan, unless a deviation is agreed upon by ADEQ in writing. RID shall begin implementation of task 1 and 2 concurrently, and 2, 3 and 4 sequentially. Conditional approval is based on the assumption that each of these areas of concern will be investigated appropriately and the results of the investigations will demonstrate that the ERA continues to meet minimum applicable statutory and rule requirements. Days are calendar days, unless specifically noted otherwise.

Task No.	Description	Completion/Submittal Date
1. Public Health Threat	The RID work plan states there is a current risk to the public health from exposure to VOCs (from both air and water) within the West Van Buren Area (WVBA), however, specific documentation about the risks and how the risks will be mitigated during the ERA implementation has not yet been provided.	Within 30 days of ERA approval, RID shall submit a risk analysis work plan to ADEQ documenting the risks and demonstrating to ADEQ how and when the ERA will mitigate the risks.
2. RID Wells Investigation	Due to the proposed increased pumping rate at RID wells to be used for remediation, RID must conduct well testing and modeling to insure that changes in pumping will not adversely affect groundwater quality and levels within the WVBA beyond what would be expected with the current pumping conditions. Water levels must be maintained at or near current levels taking into account natural variations. The investigation must determine how ERA workplan implementation will affect both the aquifer and wells in the area of the plume.	Within 45 days of ERA approval, RID shall submit a well investigation work plan for the investigation of RID wells within the plume boundary. This investigation shall include at a minimum, water levels, screen intervals, spinner log testing, depth specific analytical testing, and video logging. Within 60 days of completion of the work required by the well investigation work plan, RID shall submit a well investigation report to ADEQ.

Task No.	Description	Completion/Submittal Date
3. Groundwater Modeling	<p>A groundwater model must be constructed to estimate the effects of the changed RID well pumping rates. RID has indicated that the overall pumping rate will stay the same; however, the wells that will be pumped will change. This change must be modeled.</p> <p>The groundwater model must also evaluate how the diverted pumpage of RID wells will affect other contaminant groundwater plumes, such as those created at Leaking Underground Storage Tank (LUST) sites and neighboring WQARF and Superfund sites.</p> <p>The model must also consider differing pumping rates and locations. One of the goals of the ERA is to remediate groundwater. RID must maximize, to the extent practical, the removal of contaminants from the subsurface when the ERA is implemented. Currently the RID treatment system plan is based on treating the entire volume of groundwater that the RID wells are capable of pumping. However, this may be excessive if the wells can be pumped at a lower rate from the contaminant zone and still maintain the desired effects of groundwater recovery. Therefore, the model shall also consider impacts of other pumping rates on drawdown and capture zones.</p>	<p>Within 60 days of ADEQ's written approval of the well investigation report, RID shall submit a groundwater model work plan. At a minimum, the groundwater model shall estimate the effects of changed pumping rates and locations on the aquifer, including but not limited to water levels and all contaminant plumes within the WVBA and neighboring WQARF and CERCLA sites.</p> <p>Within 60 days of completion of the work required by the groundwater model work plan, RID shall submit a groundwater model report to ADEQ for approval.</p>

Task No.	Description	Completion/Submittal Date
4. Pump and Treat System	<p>RID must complete an engineering design study which describes all technical requirements for a pump and treat remediation system, including a description of the influent and effluent contaminant levels.</p> <p>All applicable permits must be in place, prior to construction and/or operation of the pump and treat system, as required under the relevant statutes and rules.</p> <p>RID must also submit a construction, operation and maintenance work plan for the pump and treat system. The work plan must contain a plan for monitoring groundwater quality and groundwater elevations, including what wells will be sampled and monitored, the frequency that they will be sampled and monitored, and the parameters that will be analyzed. As part of the work plan, RID must also submit proposed sampling frequency, locations, and analytical methods, at the pump and treat system.</p>	<p>Within 60 days of ADEQ's written approval of the groundwater model report, RID shall submit an engineering design study for the pump and treat remediation system sealed by an Arizona Registered Professional Engineer. At a minimum the engineering design study shall include all of the technical design requirements of the pump and treat remediation system, including a description of the influent and effluent contamination levels. In addition, the engineering design study must include a list of all permits that must be obtained prior to construction and operation.</p> <p>Within 60 days of ADEQ's written approval of the engineering design study, RID shall submit a remediation system construction, operation, and maintenance work plan. At a minimum the work plan shall include, an Operation and Maintenance (O&M) plan for the remediation system, a description of the sampling of RID canals and wells (both for groundwater elevation and quality) during operation of the remediation system, and a description of sampling of remediation system influent and effluent water.</p>

Attachment E



Douglas A. Ducey
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Henry R. Darwin
Director

April 13, 2015

Via email and regular mail

Mr. Donovan Neese
Roosevelt Irrigation District
103 West Baseline Road
Buckeye, Arizona 85326

Re: Draft Feasibility Study - Roosevelt Irrigation District

Dear Mr. Neese:

The Arizona Department of Environmental Quality (ADEQ) has completed its review of the *Revised Draft Feasibility Study Report* (FS Report), submitted November 26, 2014. The FS Report was prepared by Synergy Environmental, LLC on behalf of Roosevelt Irrigation District (RID) for the West Van Buren (WVB) Water Quality Assurance Revolving Fund (WQARF) site. ADEQ has reviewed the FS Report under an executed working agreement dated October 8, 2009 between RID and ADEQ.

ADEQ had previously completed the "administrative completeness" review and provided comments to RID. It should be noted that the checklist used for this portion of the review was more administrative than substantive. During this review, it was determined that ADEQ should have answered Item #7 as "No" versus "Not Applicable". ADEQ agreed to correct that error when providing feedback on the FS Report. By way of this letter, ADEQ is correcting that error.

ADEQ has determined that the FS Report meets the requirements of Arizona Revised Statutes 49-287.03 and Arizona Administrative Code R18-16-407 and therefore ADEQ is approving RID's FS Report.

Please be aware, though, that because competing State-wide budget priorities have resulted in the continued underfunding of WQARF, ADEQ will be discontinuing all discretionary work on the WVB WQARF site at this time. Should funding levels change, ADEQ will of course re-evaluate this decision.

Mr. Donovan Neese
April 13, 2015
Page 2

Feel free to contact me should you have any questions.

Sincerely,



Laura L. Malone, Director
Waste Programs Division

Cc: Tina LePage ADEQ
Danielle Taber, ADEQ
Anthony Young, AGO
Dennis Shirley, Synergy Environmental, LLC.
Julie Carver, Matrix Design Group, Inc.

Attachment F



David P. Kimball
Attorney
Direct: (602) 530-8221
Email: dpk@gknet.com

January 6, 2017

VIA ELECTRONIC MAIL ONLY

Mr. Thomas Buschatzke
Director
ARIZONA DEPARTMENT OF WATER RESOURCES
1110 W. Washington Street
Phoenix, AZ 85007

Re: **Proposed Application for Poor Quality Groundwater Withdrawal Permit for the WVBA WQARF Site**

Director Buschatzke:

This letter responds to your December 30, 2016 letter. In responding, I feel it necessary for the record to first accurately characterize our communications with ADWR's staff over the past several months. These communications were pursued to "facilitate the prompt conduct" of the ADEQ-approved groundwater remedial action for the West Van Buren Area (WVBA) Water Quality Assurance Revolving Fund Registry Site (WQARF Site) in order to address the numerous hazardous substances, including the known human carcinogen TCE, that have contaminated the local groundwater, are being exposed to the local minority community, and have impacted the wells and water supply of the Roosevelt Irrigation District (RID), all in violation of applicable Arizona water quality and public health standards and established EPA thresholds.

RECENT ADWR DISCUSSIONS

In my August 31, 2016 email response to your August 29, 2016 inquiry regarding my August 26, 2016 letter, I did not say that I was "not seeking ADWR's written interpretation" simply in preference of another meeting as stated in your December 30, 2016 letter. I clearly stated that "we do not believe that the delay, costs and formality of pursuing a formal interpretation under ARS § 41-10001.02 is necessary or justified" because "our review of ADWR's records confirmed that, over the last 30 years, ADWR has consistently and without exception issued PQGWPs to all ADEQ and EPA-approved groundwater remedial actions ... [and that] such consistent action over the past 30 years by ADWR clearly indicates an established interpretation of general applicability, such that ADWR can and should promptly issue a PQGWP for the WVBA WQARF Site." My August 31, 2016 email continued to note

that any “undue delay by ADWR in issuing a PQGWP to implement the ADEQ-approved RID groundwater remedial action for the WVBA WQARF Site would not only violate ADWR’s statutory responsibility under ARS § 49-290.01.A to ‘*expedite the processing and issuance of [PQGWP]s*. . . to facilitate the *prompt conduct* of approved remedial actions’ (emphasis added), it would prohibit implementation of the specific groundwater remedial action approved by ADEQ for the WVBA WQARF Site, result in continued violations of the enforceable aquifer water quality standards, and continue the uncontrolled releases of hazardous volatile organic compounds into the predominantly minority local community. For these reasons, time is of the essence in the issuance of the PQGWP for the WVBA WQARF Site.” As a result, I concluded my August 31, 2016 email with: “To avoid any undue delay, we are prepared to meet at your earliest convenience to walk through the details of the PQGWP application for the WVBA WQARF Site.”

Given your September 1, 2016 response that “DWR is happy to meet ... to walk through the details of the PQGWP application for the WVBA WQARF Site ... [and] [t]o meet ... [our] request to move this forward,” I was under the impression that ADWR, after reviewing my August 26, 2016 letter, was finally acknowledging its Title 49 obligations and 30-year history of routinely issuing PQGWPs to “facilitate the prompt conduct of [government] approved remedial actions.” Sadly, the subsequent meetings with ADWR’s staff were focused solely on certain Title 45 provisions and a refusal to act consistent with ADWR’s 30-year history of routinely issuing PQGWPs to implement government-approved remedial actions as required by Title 49. For example, ADWR’s September 26, 2016 email clarified that ADWR would not comply with ADWR’s Title 49 obligations to “*expedite the processing and issuance of permits ... to facilitate the prompt conduct of approved remedial actions*,” but instead would only act “consistent with ADWR’s efforts to process and review all applications that the agency receives as quickly as possible” and that “ADWR has made no decision on whether or not it will grant a permit.” ADWR’s September 26, 2016 email also criticized any reference to and any reliance on the numerous and consistent ADWR statements contained in historical PQGWP applications approved by ADWR to implement government-approved remedial actions as required by Title 49. Instead, ADWR claimed “each application is unique, and ADWR’s determinations on those applications are made on a case-by-case basis after considering not only the information provided in the application, but supporting documentation as well.”

After our September 27, 2016 meeting where ADWR’s staff continued to ignore and disregard ADWR’s Title 49 obligations and raised a number of new application standards, we responded in an email, dated September 29, 2016, that “in an effort to meet the unexpected new application standards established at our meeting, we have provided specific responses ... [rather] than the minimal responses previously approved by ADWR for other PWGWP applications to implement approved groundwater remedial actions. Despite the new and more comprehensive requests for information that prior applicants have not been subject to, we are willing to comply, where possible and reasonable, in order to assist the agency to *expedite the administrative and substantive reviews* once the PQGWP application is formally submitted.” In response to our September 29, 2016 email, ADWR in an email, dated October 3, 2016, requested two more

pieces of information and stated that "so long as the above-described information is provided at the time of the filing of your application, we believe that your proposed responses, along with the supporting documentation that you have provided to date, ... would be sufficient to satisfy the requirements for *administrative completeness* [only] under A.R.S. § 45-523(A)." ADWR's October 3, 2016 email goes on to state that because "this email adequately identifies the information ADWR needs for its *administrative completeness* review ... we do not believe that another pre-application meeting will be necessary [and] [w]e are available to answer any additional questions that you may have through written correspondence."

In short, your December 30, 2016 letter inaccurately characterizes the reasons and scope of our request for another meeting. In our October 6, 2016 response, our request for another meeting was "to address the *substantive [not the administrative completeness]* requirements that we previously have discussed in correspondence with the agency [since] [w]e believe that expediting the PQGWP *administrative and substantive* reviews will ensure that we can expedite the permitting process to move fast toward the public notice and comment period ... [because] [a]s we have discussed with the agency, time is of the essence since a party has agreed to fund the completion of the ADEQ-approved RID groundwater remedial action for the WVBA WQARF Site upon issuance of the PQGWP."

Our October 6, 2016 email also questioned ADWR's need for the additional information requested in ADWR's October 3, 2016 email as conditions to satisfy even "the requirements for administrative completeness." Specifically, we assumed that such a request was a misunderstanding since it would violate the provisions of ARS §§ 41-1030 and 1079 and would be inconsistent with the PQGWP application and ADWR's historical requirements "of other PQGWP applicants for the agency's administrative or substantive reviews." Additionally, we questioned that the requested information "appears to be irrelevant to a PQGWP, which grants only an administrative right to *withdraw* poor quality groundwater" especially "for a PQGWP that is to be issued to facilitate the implementation of an ADEQ-approved groundwater remedial action that already addresses and describes the transportation of water for its proposed beneficial use." We questioned some of ADWR's concerns raised with the ADEQ-approved groundwater remedial action because approving remedial actions under Title 49 is outside ADWR's statutory authority and because "ADWR-issued PQGWPs include the condition that 'the issuance of this permit does not constitute endorsement [by ADWR] of the assertions or findings of investigations and studies submitted by the Permittee as part of its applications.'" Once again, in my October 14, 2016 email to the Directors of ADEQ and ADWR, we raised similar legal concerns after the October 13, 2016 meeting with ADWR because "ADWR's staff raised a number of troubling issues that directly conflict and/or are inconsistent with ADEQ's WQARF remedial action program and the permit requirements and conditions that ADWR has required in previously approved PQGWPs to implement any government-approved remedial actions."

Your December 30, 2016 letter, yet again, raises an issue that not only has never been applied to other applicants that obtained a PQGWP to implement government-approved remedial actions, but directly violates ADWR's Title 49 obligations and the mandatory statewide remedial action standards in ARS § 49-282.06.B.4.b. ADWR's staff first raised this potential issue as to "whether the issuance of a PQGWP is prohibited in this case by virtue of A.R.S. § 45-491" after my August 26, 2016 letter demonstrated that ADWR's initial opposition to a PQGWP in this case was inconsistent with ADWR's Title 49 obligations and ADWR's 30-year history of routinely issuing PQGWPs to implement government-approved remedial actions. Pursuant to ARS § 45-491, "in an active management area, a city, town, private water company or irrigation district may withdraw groundwater only pursuant to this article, except as provided by a grandfathered right and except as otherwise provided in this section." ARS § 45-491(C) states that a "city, town or private water company may withdraw groundwater pursuant to a poor quality groundwater withdrawal permit issued under section 45-516" and does not include an "irrigation district."¹ Of course an "irrigation district" is unable to withdraw groundwater pursuant to a poor quality groundwater withdrawal permit under ARS § 45-516 since ARS § 45-516 specifically limits ADWR's authority to "issue a permit to a non-irrigation user." Notwithstanding the referenced language in ARS §§ 45-491 and 45-516, both enacted into law in 1980, ADWR has routinely issued PQGWPs to "irrigation users," including an irrigation district defined under ARS § 45-402, in order to comply with ADWR's 1986 statutory obligation "to facilitate the processing and issuance of [PQGWPs] ... to expedite the prompt conduct of [government] approved remedial actions."

Despite ADWR's 30-year historical practice of issuing PQGWPs to all government-approved remedial actions, regardless of the language in ARS §§ 45-491 and 516, and the fact that the potential applicant for a PQGWP to conduct the ADEQ-approved groundwater remedial action for the WVBA WQARF Site is not an "irrigation district," ADWR continues to inexplicably oppose the PQGWP on this basis. When pressed for clarification on the phone and in meetings, ADWR has stated that any party remediating groundwater contamination in a well owned by an irrigation district would be the agent of the irrigation district and, therefore, would trigger the alleged prohibition in ARS § 45-491. As noted in my October 14, 2016 email to the ADEQ and ADWR Directors, such an interpretation directly violates the mandatory statewide remedial action standards in ARS § 49-282.06.B.4.b. requiring that "*the selected remedial action shall address, at a minimum, any well [whether owned by an irrigation district or not] that at the time of selection of the remedial action ... either supplies water for municipal, domestic, industrial, irrigation or agricultural uses or is part of a public water system if the well would now or in the reasonably foreseeable future produce water that would not be fit for its current or reasonably foreseeable end uses without treatment due to the release of hazardous substances.*"

¹ As defined by ARS § 45-402, an "irrigation district" is established "to provide for the improvement of such lands ... susceptible of irrigation" (ARS § 48-2303) or "to provide for the irrigation of lands in the area." ARS § 48-2602.

Yet again in your December 30, 2016 letter, ADWR continues to unlawfully focus on the 1980 Title 45 provisions that were enacted before the creation in 1986 of ADEQ, the WQARF program, the enforceable aquifer water quality and public health standards and ADWR's Title 49 obligations. The Arizona legislature recognized the conflict that might arise under ADWR's 1980 Title 45 water quality management statutes to implement the new 1986 Title 49 groundwater quality remedial action statutes, which is why the Arizona legislature in 1986 mandated that ADEQ and ADWR enter into a Memorandum of Understanding and authorized ADWR to waive any Title 45 requirement that would delay or prohibit the implementation of an ADEQ-approved remedial action under Title 49.

WAIVER AND MOU

As noted in my December 22, 2016 letter, we have not heard a response from ADWR about participating in the discussions with ADEQ on a potential waiver of the new and/or irrelevant issues raised by ADWR that have delayed the "the prompt conduct" of the ADEQ-approved remedial action for the WVBA WQARF Site. It has been over two and a half months since my October 14, 2017 request for a meeting with yourself and the Director of ADEQ in order to "expedite the processing and issuance" of the PQGWP "to facilitate the prompt conduct of [the] approved remedial actions" for the WVBA WQARF Site as required by Arizona law. Such a meeting would be required if ADWR decided to waive any Title 45 requirement instead of pursuing a formal Memorandum of Understanding (MOU) on the issuance of permits to implement government-approved remedial actions as required by ARS § 49-290.01(B).

Given the initial reasons for ADWR's opposition to a PQGWP to implement the ADEQ-approved groundwater remedial action for the WVBA WQARF Site, we performed a public records search of ADWR's historical review and issuance of PQGWPs to implement government-approved remedial actions. During our review of ADWR's historical practice of routinely issuing PQGWPs to implement government-approved remedial actions, we found that ADWR never raised the issues or prohibited a PQGWP based on the reasons that were presented to us. The public records search also revealed that ADWR has never formally waived a Title 45 requirement when issuing PQGWPs to implement government-approved remedial actions, even though many of the historical and existing PQGWPs fail to comply with the plain terms of ARS § 45-516 and other Title 45 requirements. Therefore, we had assumed that the plain terms of ARS § 45-516 and the other Title 45 provisions had been superseded by a MOU between ADEQ and ADWR as required by ARS § 49-290.01(B) since the violation of the applicable aquifer water quality standards is prohibited by ARS §§ 49-262 and 263 and constitutes an "immediate and substantial endangerment to the public health or the environment." Unfortunately, despite ADWR's previous statement to the contrary, a MOU has not been formalized even though ADWR has established an informal MOU process in its own Management Plans for Arizona's Active Management Areas and substantive policy statements.

As noted in my October 7, 2016 letter to ADEQ and ADWR, the informal MOU process used by ADEQ and ADWR for decades should simply be formalized to protect all prior PQGWPs that did not obtain a waiver of any Title 45 provisions and allow ADWR's expedited review and issuance of all future PQGWPs to implement government-approved remedial actions as required by Title 49. A formal MOU would provide the certainty that a PQGWP will be expeditiously processed and issued and the consistency that all government-issued PQGWP applications will be treated the same. Formalizing the process already outlined in statute and ADWR's Management Plans and substantive policy statements could be achieved within days, compared to the over two and a half months that we have been requesting a meeting between ADWR and ADEQ. Sadly, ADWR continues to disregard the statutory obligation to execute a formal MOU, as demonstrated by the absence of any discussion of the MOU in your December 30, 2016 letter, and continues to manufacture excuses to unlawfully delay implementation of the ADEQ-approved remedial actions at the WVBA WQARF Site.

NEED FOR REMEDIAL ACTION AT WVBA WQARF SITE

Consistent with ADEQ's prior approvals, a groundwater remedial action is necessary to protect public health, welfare and the environment at the WVBA WQARF Site. The ADEQ-approved groundwater remedial action being undertaken at the WVBA WQARF Site has been determined by ADEQ to comply with the following mandatory remedial action criteria in ARS § 49-282.06: (i) assure the protection of public health and welfare and the environment; (ii) provide for the control, management or cleanup of the hazardous substances in order to allow the maximum beneficial use of the waters of the state; (iii) be reasonable, necessary, cost-effective and technically feasible; (iv) address, at a minimum, any well that at the time of selection of the remedial action ... would now or in the reasonably foreseeable future produce water that would not be fit for its current or reasonably foreseeable end uses without treatment due to the release of hazardous substances; and (v) be consistent with the requirements of title 45, chapter 2. Additionally, many of the costs incurred to implement the ADEQ-approved groundwater remedial action have been determined by ADEQ to be "reasonable, necessary and cost-effective remedial action costs incurred in response to a release or threat of a release of a hazardous substance or pollutants that presents an immediate² and substantial endangerment to the public health or the environment."³

The groundwater within the WVBA WQARF Site is contaminated by numerous hazardous substances, including TCE, above applicable Arizona water quality and public health standards, which creates an immediate and substantial endangerment to public health, welfare and the environment. As you may be aware, TCE was recently upgraded by the United States

² As noted in *Lincoln Properties, Ltd. V. Higgins*, 1993 WL 217429, 13 (E.D.Cal 1993) and other courts, "a finding of 'imminence' does not require a showing that actual harm will occur immediately" since "an endangerment need not be immediate to be 'imminent.'" However, despite this legal distinction, the terms "imminent" and "immediate" are routinely identified as synonyms. See <http://www.thesaurus.com/browse/Imminent> and <http://www.merriam-webster.com/thesaurus/imminent>.

³ ARS § 49-282.E.11.

Department of Health and Human Services' National Toxicology Program to a "known human carcinogen." This recent federal action is consistent with EPA's 2011 toxicological review and determination that TCE is carcinogenic to humans by all routes of exposure and poses a potential human health hazard for noncancer toxicity to the central nervous system, kidney, liver, immune system, male reproductive system and the developing embryo/fetus.

EPA has recently recommended a not-to-be exceeded, average TCE air exposure level of 2 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) for women of reproductive age due to a heightened potential risk of fetal heart defects. Pursuant to the ADEQ-approved RID Early Response Action for the WVBA WQARF Site, TCE and other hazardous volatile organic compounds (VOCs) in air were sampled in the Public Health Exposure Assessment for the WVBA WQARF Site. The sampling identified the presence of TCE and other VOCs in all air samples obtained in proximity to the RID wells and water conveyance systems in concentrations ranging from 1.88 to 29 $\mu\text{g}/\text{m}^3$ in the breathing zone where the public may be exposed near RID wells and diversion structures. In contrast, these same VOCs were not detected in background samples at locations away from the sources of air emissions associated with the RID water system. The observed TCE concentrations in ambient air generally exceed the threshold EPA now considers protective for short-term exposure to sensitive populations in a residential setting.

As outlined in the ADEQ-approved RID Feasibility Study Report and recent ADEQ groundwater samples, the groundwater within the WVBA WQARF Site exceeds the applicable Arizona aquifer water quality standards (AWQSS). ADWR has noted that the AWQSS "are the cornerstone of the state's groundwater protection program" and "because all aquifers in Arizona are classified and protected for drinking water use, Arizona's [numeric and narrative] AWQSS are enforceable standards for water quality in all of Arizona's aquifers."⁴ ADWR has acknowledged that "Arizona has adopted the federal primary MCLs, established under [the Safe Drinking Water Act], as numeric AWQSS" and that "Arizona's narrative AWQS include the following: (1) a discharge *shall not cause a pollutant to be present in an aquifer classified for a drinking water protected use in a concentration which endangers human health ...* and (3) a discharge *shall not cause a pollutant to be present in an aquifer which impairs existing or reasonably foreseeable uses of water in an aquifer.*"⁵ Based on the recent EPA determination that TCE is more toxic than previously known when the current federal MCL (5.0 $\mu\text{g}/\text{L}$) was promulgated, the TCE concentrations in the WVBA WQARF Site, based on recent water quality sampling by ADEQ, significantly exceed the current 5.0 $\mu\text{g}/\text{L}$ numeric AWQS⁶ and the narrative AWQS (likely around 1.0-2.0 $\mu\text{g}/\text{L}$).⁷

⁴ Phoenix AMA Third Management Plan, 7-7, citing ARS § 49-224(B).

⁵ *Id.*

⁶ In the latest ADEQ water quality sampling conducted first quarter of 2015, TCE concentrations as high as 67.9 $\mu\text{g}/\text{L}$, 189.0 $\mu\text{g}/\text{L}$ and 23.1 $\mu\text{g}/\text{L}$ were detected in the upper alluvial unit 1, the upper alluvial unit 2, and the middle alluvial unit of the aquifer, respectively.

⁷ Recent discussions throughout the country suggest that a new MCL may be set in the near future closer to 1.0-2.0 $\mu\text{g}/\text{L}$ in order to account for the new EPA toxicity data. In fact, the current EPA Region 9 Regional Screening Level for TCE in residential tap water (drinking water) is 0.49 $\mu\text{g}/\text{L}$.

Mr. Thomas Buschatzke
January 6, 2017
Page 8

CONCLUSION

As we have noted in numerous writings and meetings with ADWR for months now, ADWR's failure to comply with its Title 49 obligations and its 30-year historical practice of routinely issuing PQGWPs to implement government-approved remedial actions is prohibiting implementation of the specific groundwater remedial action approved by ADEQ for the WVBA WQARF Site, resulting in continued violations of the enforceable aquifer water quality and public health standards and the uncontrolled release and exposure of the local minority community to hazardous VOCs at levels exceeding established EPA thresholds.

Unless ADWR provides appropriate assurances by January 31, 2017 that it will "expedite the processing and issuance" of a PQGWP "to facilitate the prompt conduct of [the ADEQ] approved remedial action" for the WVBA WQARF Site as required by state law, we have no other option but to take any and all actions necessary to protect public health, welfare, the environment and RID's legal rights in its wells and water supply.

Very truly yours,

GALALGHER & KENNEDY, P.A.

By:


David P. Kimball, III

cc: Hunter Moore, *Governor's Office*
Henry Darwin, *Governor's Office*
Michael Liburdi, *Governor's Office*
Danny Seiden, *Governor's Office*
Misael Cabrera, *ADEQ*

GK

Attachment G

JANICE K. BREWER
Governor



SANDY FABRITZ-WHITNEY
Director

ARIZONA DEPARTMENT of WATER RESOURCES
3550 North Central Avenue, Second Floor
Phoenix, Arizona 85012-2105
602.771.8500
azwater.gov

October 21, 2013

Mr. Donovan Neese
Roosevelt Irrigation District
103 West Baseline Road
Buckeye, Arizona 85326

Dear Mr. Neese,

On May 7, 2010, the Department issued a letter (May 7, 2010 letter) to Mr. Stan Ashby of the Roosevelt Irrigation District (RID). Among other things, the May 7, 2010 letter suggested that "a difference of opinion regarding the duration of the contract" between RID and the Salt River Valley Water Users' Association (SRVWUA) could negatively affect the legal availability of groundwater pumped by RID for use within its boundaries, for purposes of Assured Water Supply determinations.

Pursuant to your request, the Department has reviewed the following agreements provided by counsel for RID:

1. Water Contract, dated August 25, 1921, between the Carrick & Mangham Agua Fria Lands & Irrigation Company and SRVWUA.
2. Assignment, dated July 11, 1923, between the Carrick & Mangham Agua Fria Lands & Irrigation Company and RID.
3. Supplement Agreement, dated February 3, 1927, between RID and SRVWUA.
4. Supplement Agreement, dated May 31, 1950, between RID and SRVWUA.

After review, the Department has determined that the duration of these agreements would not affect the legal availability of groundwater pumped by RID for use within its boundaries, for purposes of Assured Water Supply determinations. If I may be of further assistance, please contact me at (602) 771-8615.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew J. Craddock".

Andrew J. Craddock, Manager
Recharge, Assured & Adequate Water Supply Program

Attachment H

Kenneth C. Slowinski

From: Kenneth C. Slowinski
Sent: Wednesday, May 20, 2015 4:19 PM
To: 'dpk@gknet.com'; 'John Weldon'
Subject: Draft letter from Tom Buschatzke to David Kimball
Attachments: Draft Letter to David Kimball 5-20-15.docx

David and John,

I'm attaching the draft letter from Tom Buschatzke to David Kimball that I spoke to both of you about this afternoon. If you have any comments on the draft letter, please submit them to me by the end of the day on Friday, May 29. Thank you.

DRAFT

5-20-15

David P. Kimball, III
GALLAGHER & KENNEDY
2575 East Camelback Road
Phoenix, Arizona 85016-9225

Re: ADWR's letters dated October 21, 2013 and March 31, 2015

Dear Mr. Kimball:

I am writing to provide further clarification of the letter from Andrew Craddock of the Arizona Department of Water Resources ("ADWR") to Donovan Neese of the Roosevelt Irrigation District ("RID") dated October 21, 2013 ("2013 Letter"). I am also providing further clarification of my letter to RID and Salt River Project ("SRP") dated March 31, 2015 ("2015 Letter").

The 2013 Letter was sent to RID after you requested ADWR to review four agreements between RID's predecessor, RID and the Salt River Valley Water Users' Association ("SRVWUA") and provide RID with a letter stating whether the duration of those agreements would affect the legal availability of groundwater pumped by RID from wells within SRVWUA's boundaries for use within RID's boundaries for purposes of future Assured Water Supply ("AWS") determinations.

As stated in the 2013 Letter, ADWR reviewed the four agreements and determined that the duration of the agreements would not affect the legal availability of the groundwater for purposes of AWS determinations. This statement was based on ADWR's reading of the face of the agreements, and the fact ADWR did not see an expiration date in the most recent agreement.

The 2013 Letter was based solely on ADWR's review of the four agreements provided to us, and did not address any other factors that might come before ADWR if an AWS application that includes such groundwater as a source of supply were filed with ADWR at a later date. Accordingly, the 2013 Letter was not intended to be a decision by ADWR regarding the duration of the agreements or whether groundwater pumped by RID within SRVWUA's boundaries would be legally available for future AWS determinations. At the time ADWR sent the 2013 Letter, it recognized that facts or legal issues outside of the face of the agreements could affect the duration of the agreements and RID's long-term ability to pump groundwater within SRVWUA's boundaries, which in turn could affect the legal availability of the groundwater for AWS purposes. ADWR also recognized that facts and legal issues unrelated to the duration of the agreements could affect the legal availability of the groundwater for AWS purposes. ADWR's attorney explained this to you before ADWR sent the 2013 Letter.

After ADWR sent the 2013 letter to RID, SRP requested clarification from ADWR regarding the 2013 Letter. Specifically, SRP requested that ADWR clarify that the 2013 Letter was not a

formal and binding opinion by ADWR with respect to any future AWS applications and that other legal and factual issues potentially could affect RID's long-term ability to pump groundwater within SRVWUA's boundaries. Because the 2013 Letter was limited as explained above, I felt it was appropriate for me to send the 2015 Letter and make the clarification contained in that letter. The 2015 letter clarifies that that ADWR has not made a formal decision on whether the groundwater RID intends to pump within SRVWUA's boundaries may be included as a legally available water supply in a specific AWS determination, and that any decision by ADWR on that issue would be made if and when it receives an application that includes such water as a proposed source of supply and would be based on all facts available to ADWR at that time.

The 2015 Letter did not withdraw any statement made in the 2013 Letter. However, it clarifies that if ADWR receives an application for an AWS determination that includes groundwater to be pumped by RID within SRVWUA's boundaries, ADWR will consider any relevant facts and legal issues not considered by it when it sent the 2013 Letter in determining whether the groundwater is a legally available water supply for the applicant.

Sincerely,

Thomas Buschatzke

cc: David C. Roberts, SRP

Attachment I

AMENDED STATEMENT OF CLAIMANT FORMFile No. 39-50055

Date Revised:

WEN _____

**FOR
OTHER USES¹****VERDE RIVER WATERSHED
SUPERIOR COURT OF MARICOPA COUNTY**1. **Claimant Name:** (See Attachment 1) _____SURFACE **Claimant Address:** _____ City _____
State: _____ Zip Code _____ Telephone _____2. **Basis of Claim:**

- A. ☒ Appropriation Right acquired prior to June 12, 1919. 1974 Water Rights Registration Act Registry No. 36-64086 (as amended)
- B. ☒ Appropriation Right acquired after June 12, 1919. Application No. (See Attachment 2) Permit No. _____, or Certificate of Water Right No. _____
- C. ☒ Decreed water right. Principal litigants, court, date and case no. (See Attachment 3)
- D. ☐ Right to withdraw groundwater. Grandfathered Right No. _____
- E. ☒ Other, describe: (See Attachment 3) _____

3. **Claimed Priority Date:** ____/____/____ (month/day/year) (See Attachment 4)4. **Use:**

- | | |
|--|--|
| A. <input checked="" type="checkbox"/> Municipal | E. <input checked="" type="checkbox"/> Recreation, Fish & Wildlife |
| B. <input checked="" type="checkbox"/> Commercial or Industrial | F. <input checked="" type="checkbox"/> Other, describe: |
| C. <input checked="" type="checkbox"/> Mining | <u>Irrigation, Domestic, Power</u> |
| D. <input checked="" type="checkbox"/> Stockwatering other than from a stockpond | _____ |

5. **Source of Water:** (See Attachment 5)

- A. ☒ Stream: name Verde River, tributary to Salt River
- B. ☐ Spring: name _____, tributary to _____
- C. ☒ Lake or Reservoir: name _____, tributary to _____
- D. ☐ Groundwater.

6. **Legal description of the Point of Diversion:** (See Attachments 6-1 through 6-3)

_____, ¼, _____, ¼, _____, ¼, Section _____, Township ____ N/S, Range ____ E/W

7. **If there are Irrigation, Domestic or Stockpond Uses also supplied from the Point of Diversion, describe:** (See No. 4 above) _____8. **Means of Diversion:** (See Attachments 3 and 7)

- A. ☐ Instream pump.
- B. ☒ Gravity flow into a ditch, canal or pipeline.
- C. ☒ Well: Arizona Department of Water Resources Well Registration No. 55- _____
- D. ☒ Other, describe: _____

¹ See Instructions for explanation of uses in this category

9. **Means of Conveyance:** (See Attachments 8-1 and 8-2)
- A. ☒ Ditch, canal or pipeline. If the means of conveyance is owned and/or operated by some other entity, please give name and address: _____
- B. ☒ Other, describe: _____
10. **Place of Use, if other than point of diversion:** (See Attachments 9-1 and 9-2)
- County Maricopa
- | Legal Subdivision | Section | Township | Range |
|-------------------|---------|----------|-------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
11. **Claimed Right:** (See Attachment 10)
- A. Maximum Flow Rate: _____
- B. Annual Volume of Water Use: _____ acre-feet
- C. Storage Right: _____ acre-feet
- ☐ cubic-feet per second
- ☐ gallons per minute
- ☐ Arizona miner's inches
12. Attach photographs, maps or sketches necessary to show the point of diversion, storage reservoir(s) place(s) of use and means of conveyance. (See Attachments 6-1, 6-2, 6-3 and 9-2)
13. It may be necessary for a representative from the Department of Water Resources to inspect the diversion, conveyance and place of use. Your signature following will grant permission to enter your property for the purpose of inspection: Signature of Claimant William P. Schrader
14. Should it be necessary for a representative of the Department to contact you as the claimant or your representative, are there any special instructions regarding time of day or address to aid in locating the specified person? Mr. David C. Roberts (602) 236-2343
15. **Attach Filing Fee to Form.** Mail form(s) and filing fee(s) to: Department of Water Resources Adjudications Division, 15 South 15th Avenue, Phoenix, Arizona 85007.
16. **Additional comments:** This Statement of Claimant relates to the SRP reservoirs in the Verde River watershed and water uses in the Verde River and Lower Gila River watersheds. As discussed in Attachment 11, SRP has filed related Statements of Claimant for its reservoirs and water uses in the Salt River watershed and for its water uses in the Lower Gila River watershed.
(attach additional sheet if required)
17. **Notarized Statement:**
- I(We), William P. Schrader, President
the claimant(s) named in this claim, do hereby certify under penalty of perjury, that the information contained and statements made herein are to the best of my(our) knowledge and belief true, correct and complete.

(seal)

April 28, 2003
My Commission Expires



William P. Schrader

Terrill A. Lonon

Notary Public

or,

Authorized Personnel of the Department of Water Resources

LIST OF ATTACHMENTS

Attachment 1:	Claimant Name
Attachment 2:	Applications to Appropriate Water
Attachment 3:	Basis of Right - Verde River
Attachment 4:	Claimed Priority Dates
Attachment 5:	Source and Storage of Water
Attachment 6-1:	Horseshoe Dam and Reservoir Map
Attachment 6-2:	Bartlett Dam and Reservoir Map
Attachment 6-3:	Phoenix Verde Pipeline and Verde Treatment Plant Map
Attachment 7:	Means of Diversion
Attachment 8-1:	Means of Conveyance
Attachment 8-2:	Means of Conveyance Map
Attachment 9-1:	Place of Use Description
Attachment 9-2:	Place of Use Map
Attachment 10:	Claimed Right
Attachment 11:	Related Statements of Claimant

ATTACHMENT 1
CLAIMANT NAME

This claim is made by the Salt River Valley Water Users' Association (Association or SRVWUA) and the Salt River Project Agricultural Improvement and Power District (SRPAI&PD), collectively referred to as SRP, for themselves and on behalf of SRVWUA shareholders. In addition, this claim includes water necessary to fulfill SRP's obligation to deliver water to the following entities in satisfaction of their independent water rights, pursuant to the following decrees, settlements, and agreements, and all supplements and amendments thereto:

- Arlington Canal Company – Stipulation Between Arlington Canal Company and Salt River Valley Water Users' Association, Roosevelt Irrigation District, and Maricopa County Water Conservation District No. 1, 1944
- Bogle Farms, Inc. et al. – Agreement between the Salt River Valley Water Users' Association and Bogle Farms, Inc. et al., 1965
- Buckeye Irrigation Company – Basis of Settlement of Litigation Between Buckeye Irrigation Company and the Salt River Valley Water Users' Association, 1943
- City of Phoenix – Agreement between Salt River Valley Water Users' Association and the City of Phoenix, A Municipal Corporation, 1946
- Fort McDowell Indian Community – Fort McDowell Indian Community Water Rights Settlement Agreement, 1993
- Lakin Cattle Company – Agreement Between Loring C. Lennox and the Salt River Valley Water Users' Association, 1921
- Maricopa Garden Farms – Agreement between the Fidelity Savings & Loan Association and the Salt River Valley Water Users' Association, 1924
- Maricopa Indians – Contract for Pumping Water for Maricopa Indians on Gila River Indian Reservation, 1936
- New State Irrigation and Drainage District – Agreement between New State Canal Company, Landowners, and the Salt River Valley Water Users' Association, 1924
- Peninsula-Horowitz – Agreement Between the Salt River Valley Water User's Association, Roosevelt Irrigation District, and Valley Bank and Trust Company, N. P. McCallum, George Taylor, T. W. Barker, C. W. and Bertha Boggs, A. B. Vauk, W. A Thompson, and Maude M. Tanton Grimshaw, 1930
- Phelps Dodge Corporation – Agreement between Salt River Valley Water Users' Association, Phelps Dodge Corporation, and Defense Plant Corporation, 1944
- Roosevelt Irrigation District – Agreement between A. A. Carrick and Frank J. Mangham and the Salt River Valley Water Users' Association, 1920
- Roosevelt Water Conservation District – Agreement between the Salt River Valley Water Users' Association and Auxiliary Eastern Canal Landowners' Association, 1920
- Salt River Pima-Maricopa Indian Community – Agreement between the United States and the Salt River Valley Water Users' Association Verde River Storage Works, 1935
- Salt River Pima-Maricopa Indian Community – Salt River Pima-Maricopa Indian Community Water Rights Settlement Agreement, 1988
- St. John's Irrigation District – Agreement between St. John's Irrigation District and the Salt River Valley Water Users' Association, 1924

Attachment J

TABLE 10. GROUNDWATER REMEDIAL ACTIONS - COMPARATIVE ANALYSIS
West Van Buren Area WQARF Site

Site	Treatment Technology	Required Treatment Levels ¹	End Use of Remediated Water	Remedy Capital Cost (in years completed)	Remedy Capital Cost (2014 dollars) ²	Design Treatment Capacity	Normalized ³ Capital Costs/ Treatment Capacity (\$/gpm)	Amount of Groundwater Extracted Through 2013	Amount of VOC Mass Removed Through 2013	Average Annual Groundwater Pump & Treat Rate	Annual VOC Mass Removal Rate	Annual Remedy O&M Costs	Routine O&M Cost (\$/lboc)	Routine O&M Cost (\$/kgal)
M52 CERCLA Site Operable Unit 1	Air Stripping with VGAC	Primary Drinking Water Standards	Industrial Sanitary Sewer Irrigation	\$3.1 MM ^b (1992)	\$5.3 MM	810 gpm ^d	\$6,490	3.6 billion gallons ^d	23,635 pounds ^d	230 gpm ^j (2010-2013) 215 gpm ^j	813 pounds/year ^j (2010-2013) 899 pounds ^j	\$1.3 MM/year ^p (2006-2010)	\$1,210 ^p \$1,446	\$6.37 ^p (2006-2010) \$11.50
M52 CERCLA Site Operable Unit 2	LGAC (lead/lag)	Primary Drinking Water Standards	Irrigation	\$12.0 MM ^c (2001)	\$16.2 MM	5,300 gpm ^d	\$3,057	13.3 billion gallons ^b	14,116 pounds ^k	2,108 gpm ^k (2010-2013) 1,919 gpm ^k	612 pounds/year ^k (2010-2013); 401 pounds ^k	\$1.1 MM/year ^p (2006-2010)	\$794 ^p \$2,743	\$0.84 ^p (2006-2010) \$1.09
NIBW CERCLA Site Central Groundwater Treatment Facility	Air Stripping with VGAC	Primary Drinking Water Standards	Drinking Water	\$10.4 MM ^d (1993-2000)	\$16.2 MM	9,400 gpm ^d	\$1,723	56.8 billion gallons ⁱ	51,129 pounds ⁱ (TCE only)	4,343 gpm ⁱ (2010-2013) 3,624 gpm ⁱ	TCE only 1,065 pounds/year ⁱ (2010-2013) 1,004 pounds ⁱ	\$0.86 MM/year ^q (2005-2009)	\$807 (2010-2013) \$856	\$0.37 (2010-2013) \$0.45
NIBW CERCLA Site Miller Road Treatment Facility	Air Stripping with VGAC	Primary Drinking Water Standards	Drinking Water	\$10.3 MM ^d (1995-97)	\$15.3 MM	6,300 gpm ^d	\$2,429	32.4 billion gallons ⁱ	7,937 pounds ⁱ (TCE only)	4,891 gpm ⁱ (2010-2013) 4,003 gpm ⁱ	TCE only 574 pounds/year ⁱ (2010-2013) 401 pounds ⁱ	\$0.54 MM/year ^q (2005-2007) ~\$2.3 MM/year (2008)	\$932 - 4,064 (2010-2013) \$1,334 - 5,818	\$0.21 - 0.91 (2010-2013) \$0.25 - 1.11
TIAA CERCLA Site Tucson Airport Remediation Project	Air Stripping with VGAC	Primary Drinking Water Standards	Drinking Water	\$8.7 MM ^e (1994)	\$13.9 MM	6,200 gpm ^h	\$2,242	38.1 billion gallons ^m	4,570 pounds ^m (TCE only through 2012)	3,274 gpm ^m (2010-2013) 2,511 gpm ^m	TCE only 161 pounds/year ^m (2010-2013) 107 pounds ^m	\$0.85 MM/year ^h (before 1,4-dioxane treatment began)	\$5,280 (2010-2013) \$7,944	\$0.49 (2010-2013) \$0.64
WVBA Site Proposed Less Aggressive Alternative Remedy	LGAC (lead/lag)	Primary Drinking Water Standards	Irrigation Drinking Water ^a	~\$9.4 MM ^f	~\$9.4 MM	~13,300 gpm ^{f,j}	~\$707	---	---	~11,758 gpm ⁿ	~2,503 pounds/year ^o	~\$1.7 MM/year ^{tr}	~\$670	~\$0.27
WVBA Site Proposed Reference Remedy	LGAC (lead/lag)	Primary Drinking Water Standards	Irrigation Drinking Water ^a	~\$13.6 MM ^f	~\$13.6 MM	~19,500 gpm ^{f,j}	~\$697	---	---	~16,071 gpm ⁿ	~2,820 pounds/year ^o	~\$2.5 MM/year ^{tr}	~\$883	~\$0.29
WVBA Site Proposed More Aggressive Alternative Remedy	LGAC (lead/lag)	Primary Drinking Water Standards	Irrigation Drinking Water ^a	~\$14.6 MM ^f	~\$14.6 MM	~13,300 gpm ^{f,j}	~\$1,098	---	---	~12,142 gpm ⁿ	~2,569 pounds/year ^o	~\$1.8 MM/year ^{tr}	~\$708	~\$0.28
WVBA Site Proposed Most Aggressive Alternative Remedy	LGAC (lead/lag)	Primary Drinking Water Standards	Irrigation Drinking Water ^a	~\$19.5 MM ^f	~\$19.5 MM	~29,100 gpm ^{f,j}	~\$670	---	---	~23,047 gpm ⁿ	~3,164 pounds/year ^o	~\$3.5 MM/year ^{tr}	~\$1,120	~\$0.29

TABLE 10. GROUNDWATER REMEDIAL ACTIONS - COMPARATIVE ANALYSIS
West Van Buren Area WQARF Site

Notes:

- 1) Treatment Levels applicable to site Contaminants of Concern
 - 2) Based on percentage increase in Consumer Price Index (CPI) from dates of construction completion through May 2014.
 - 3) Capital Cost in 2014 dollars relative to design treatment capacity in gpm.
- * Values in red denote 2013 reported values/metrics

Abbreviations:

M52 = Motorola 52nd Street Superfund Site	LGAC = liquid-phase GAC	O&M = operation and maintenance
NIBW = North Indian Bend Wash	lb = pound	VOC = volatile organic compound
TIAA = Tucson International Airport Area	Kgal = thousand gallons	TCE = trichloroethene
WVBA = West Van Buren Area	MM = million	~ = values are estimates
VGAC = vapor-phase GAC	gpm = gallons per minute	CERCLA = Comprehensive Environmental Response, Compensation, and Liability Act (Superfund)

Explanation:

- a) A major portion of remediated water is planned for municipal use pending RID construction of a separate conveyance pipeline from the WVBA Site to District land.
- b) *Letter of Determination for Motorola 52nd Street Facility*, Phoenix, dated September 30, 1988.
- c) *Final Remedial Action Report for Motorola 52nd Street Superfund Site, Operable Unit 2 Area*, Phoenix, Arizona, prepared by Black & Veatch Corporation, dated September 12, 2003.
- d) *Final Feasibility Study Addendum*, North Indian Bend Wash Superfund Site, Scottsdale, Arizona, prepared by the NIBW Participating Companies, dated November 15, 2000 (See Table M5 in Appendix M, Volume 5).
- e) Verbal communication: Mr. Jeff Biggs, Project Coordinator, Tucson Airport Remediation Project, Tucson Water.
- f) *Draft Feasibility Study Report*, West Van Buren Area WQARF Site, Phoenix, Arizona, prepared by Synergy Environmental (See Table 5 for design treatment capacity and Table 7 for capital and O&M costs).
- g) *2011 Sitewide Five-Year Review Report, Motorola 52nd Street Superfund Site*, Phoenix, Arizona, prepared by URS Corporation, September 2011 (See Sections 4.1 and 4.2; Tables 4-1 and 4-2).
- h) *First Five-Year Report for Tucson International Airport Area Superfund Site*, Pima County, Arizona, prepared by U.S. Environmental Protection Agency, September 2013 (See Section 4.2.1 for pounds of VOCs removed and volume of groundwater extraction over 216 month period, and Section 4.3.1 for O&M costs [2001]).
- i) The proposed remedy provides remediation of up to 26,800 gpm water supply when including blending of other contaminated supply wells that would operate according to an approved remedial action plan.
- j) Information pertaining to amount of groundwater treated and mass removed is from annual Operable Unit No. 1 Effectiveness Reports prepared by Clear Creek Associates.
- k) Information pertaining to amount of groundwater treated and mass removed is from annual Effectiveness Reports for 20th Street Groundwater Treatment Facility, Operable Unit 2 Area prepared by Connestoga-Rovers & Associates.
- l) Information pertaining to amount of groundwater treated and mass removed is from annual Site Monitoring Reports, NIBW Superfund Site prepared by the NIBW Participating Companies.
- m) Information pertaining to amount of groundwater treated and mass removed is from annual Water Quality Reports prepared by Tucson Water.
- n) Estimated pumping rate is based on assigned pumping of remedy wells developed for the FS Model (see Appendix F).
- o) Based on reported 2013 concentrations of PCE, TCE, and 1,1-DCE and projected pumping in groundwater modeling scenarios (see Appendix F).
- p) *Motorola 52nd St. Superfund Site, Five-Year Review Completed Fact Sheet*, prepared by Environmental Protection Agency and Arizona Department of Environmental Quality (See page 2 for average VOC mass removed and average volume of groundwater extracted for 2006-2010).
- q) *First Five-Year Review, Indian Bend Wash Superfund Site*, Scottsdale and Tempe, Maricopa County, Arizona, prepared by U.S. Environmental Protection Agency, September 2011 (See Table 4-8; periodic rehabilitation costs not included in O&M Costs Summary).
- r) Excluding line item costs for area-wide groundwater monitoring and capital equipment costs from Table 7 *Draft Feasibility Study Report*, West Van Buren Area WQARF Site, Phoenix, Arizona, prepared by Synergy Environmental.

EXHIBIT 2

JANICE K. BREWER
Governor



SANDRA A. FABRITZ-WHITNEY
Director

ARIZONA DEPARTMENT OF WATER RESOURCES

3550 North Central Avenue, Phoenix, Arizona 85012
Telephone (602) 771-8500

November 7, 2011

Stanley Ashby
Roosevelt Irrigation District
103 West Baseline Road
Buckeye, AZ 85326

**Re: West Van Buren Area Water Quality Assurance Revolving Fund
Registry Site**

Dear Mr. Ashby:

This letter is in response to your letter dated July 13, 2011 regarding the West Van Buren Area Water Quality Assurance Revolving Fund Registry Site ("West Van Buren Site"). Specifically you asked if the Arizona Department of Water Resources ("Department") agreed with your understanding that the treated groundwater supply Roosevelt Irrigation District ("RID") may provide from this site ("remediated groundwater") can be wheeled through the RID conveyance system, retain its ability to be reported as surface water and will be exempt from replenishment obligations under current statute and rule by the end user.

First, the Department concurs that RID has the ability to deliver the remediated groundwater to non-irrigation customers within its service area. Because RID was in existence and engaged in the withdrawal, delivery and distribution of groundwater as of January 1, 1977, it has the right to withdraw and transport groundwater to landowners within its service area, which may include new non-irrigation customers. See Arizona Revised Statutes § 45-494(1). However, there is one limitation that applies to industrial users. A.R.S. § 45-497(B) provides that an industrial user may not obtain groundwater delivery service from an irrigation district in excess of the amount it was entitled to receive on the date of designation of the active management area unless the industrial user has acquired a grandfathered right or has obtained a general industrial use permit.

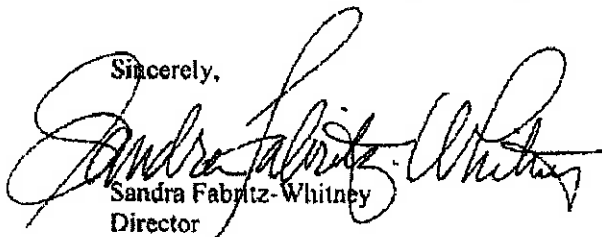
Second, as provided for in sections 4-107, 5-115 and 6-204 of the Third Management Plan ("TMP") for the Phoenix Active Management Area ("AMA"), entitled "Remediated Groundwater Accounting for Conservation Requirements," groundwater withdrawn pursuant to an approved remedial action project under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") or Title 49, Arizona Revised Statutes, and used by a person subject to a conservation requirement established under chapter 4, 5 or 6 of the TMP shall be accounted for consistent with the accounting for surface water for purposes of determining the person's compliance with the conservation requirement.

While this water is accounted for as surface water for purposes of compliance with the conservation requirements in the TMP, it is accounted differently in the case of Assured Water Supply. For purposes of the Assured Water Supply program, it is important to clarify that this water is still accounted for as groundwater. The distinction is whether or not the use of remediated groundwater can be deemed consistent with the management goal of the AMA as set forth in Arizona Administrative Code ("A.A.C.") Title 15, Chapter 12, Article 7, including A.A.C. R12-15-722 ("Consistency with Management Goal") and thus be exempt from replenishment obligations. A municipal provider's use of groundwater withdrawn pursuant to an approved remedial action project will be deemed consistent with the management goal of the AMA if the conditions in A.A.C. R12-15-729 ("Remedial Groundwater; Consistency with Management Goal") are met. One of those conditions is that the municipal provider must apply to the Department for a determination that the municipal provider's use of the groundwater is consistent with the management goal of the AMA before *January 1, 2010*¹.

Finally, you requested confirmation that RID has the ability to "wheel" the remediated groundwater through its conveyance system. In most cases a water provider cannot wheel its own water to customers through its own conveyance system. In other words, a water provider cannot introduce a specific type of water into its conveyance system, isolate that water from its other water sources in the system, and direct the water to a specified customer (except as provided in A.R.S. § 45-468(C)). However, because it was the intent of the Legislature to encourage the use of remediated groundwater by municipal water providers and for purposes of Assured Water Supply only, RID could withdraw the remediated groundwater and wheel it through its system to a specified municipal provider within its service area who has applied for and been granted a determination that the municipal provider's use of the remediated groundwater is consistent with the management goal of the AMA. The use of the remediated groundwater by that municipal provider would be exempt from replenishment obligations until January 1, 2025 under the current law.

I hope this letter has answered the questions you have raised. The Department understands the importance of this issue and would be more than happy to further assist you in this matter. Please contact Scott Miller at 602-771-8604 if you would like to have any follow up discussions.

Sincerely,



Sandra Fabritz-Whitney
Director

cc: Scott Miller, Statewide AMA Director
Ken Slowinski, Chief Legal Counsel

¹The January 1, 2010 deadline was established in session law (Laws 1997, Ch. 287, 352(C)).

JANICE K. BREWER
Governor



SANDY FABRITZ-WHITNEY
Director

ARIZONA DEPARTMENT of WATER RESOURCES
3550 North Central Avenue, Second Floor
Phoenix, Arizona 85012-2105
602.771.8500
azwater.gov

October 21, 2013

Mr. Donovan Neese
Roosevelt Irrigation District
103 West Baseline Road
Buckeye, Arizona 85326

Dear Mr. Neese,

On May 7, 2010, the Department issued a letter (May 7, 2010 letter) to Mr. Stan Ashby of the Roosevelt Irrigation District (RID). Among other things, the May 7, 2010 letter suggested that "a difference of opinion regarding the duration of the contract" between RID and the Salt River Valley Water Users' Association (SRVWUA) could negatively affect the legal availability of groundwater pumped by RID for use within its boundaries, for purposes of Assured Water Supply determinations.

Pursuant to your request, the Department has reviewed the following agreements provided by counsel for RID:

1. Water Contract, dated August 25, 1921, between the Carrick & Mangham Agua Fria Lands & Irrigation Company and SRVWUA.
2. Assignment, dated July 11, 1923, between the Carrick & Mangham Agua Fria Lands & Irrigation Company and RID.
3. Supplement Agreement, dated February 3, 1927, between RID and SRVWUA.
4. Supplement Agreement, dated May 31, 1950, between RID and SRVWUA.

After review, the Department has determined that the duration of these agreements would not affect the legal availability of groundwater pumped by RID for use within its boundaries, for purposes of Assured Water Supply determinations. If I may be of further assistance, please contact me at (602) 771-8615.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew J. Craddock".

Andrew J. Craddock, Manager
Recharge, Assured & Adequate Water Supply Program

Louis, Sonja G.

From: Kenneth C. Slowinski <kcslowinski@azwater.gov>
Sent: Tuesday, August 04, 2015 11:57 AM
To: Kimball III, David P.
Subject: RE: ADWR Confirmation Letter

Dave,

Director Buschatzke has asked me to let you know that he will not be sending any additional letters to RID on this matter. Director Buschatzke believes his March 31, 2015 letter to RID and SRP accurately states ADWR's position regarding the issues described in that letter, and he does not believe that an additional letter is necessary or warranted.

There appears to be a misunderstanding regarding my conversation with you following our meeting on May 19, 2015. You state in your email that following the May 19 meeting, I confirmed by telephone that ADWR would be issuing another letter to RID. I did not make such a statement. Instead, I stated that Director Buschatzke would send another letter only if both RID and SRP agreed to the contents of the letter. After communicating the contents of several draft letters to you and SRP's attorney, it became clear that an agreement on a letter acceptable to both parties could not be reached.

Ken Slowinski
Chief Counsel
Arizona Department of Water Resources
602-771-8472



**PROTECTING ARIZONA'S
WATER SUPPLIES
for ITS NEXT CENTURY**

From: Kimball III, David P. {mailto:DPK@gknet.com}
Sent: Wednesday, July 29, 2015 12:28 PM
To: Kenneth C. Slowinski
Subject: ADWR Confirmation Letter

Ken:

I am writing to thank you personally, first, for keeping me and RID generally informed through our multiple voicemails, telephone calls and email correspondence over the last two months and, secondly, for preparing multiple draft letters on behalf of ADWR to resolve RID concerns with ADWR's March 31, 2015 letter to me. All of the ADWR draft letters were intended to confirm in writing what ADWR verbally clarified during our meeting with representatives of the Governor's office on May 19, 2015.

During the May 19 meeting, you verbally clarified on behalf of the ADWR that ADWR's March 31, 2015 letter to me was not intended to modify, withdraw or in any way annul any of the ADWR statements contained in its October 21, 2013 letter to RID and that the May 7, 2010 and October 21, 2013 ADWR letters to RID speak for themselves. The day after the May 19 meeting, you confirmed by telephone that ADWR would be issuing a letter confirming in writing what ADWR clarified verbally at that May 19 meeting. Since your May 20, 2015 confirmation, RID patiently has been waiting to receive ADWR's final written confirmation.

The delay has been unexpected as ADWR issued a draft confirmation letter, dated May 20, 2015, for RID's comment. Except for some minor, inconsequential edits, RID acknowledged that ADWR's May 20, 2015 draft confirmation letter accurately reflected what ADWR clarified during the May 19 meeting. Expecting ADWR immediately to finalize and issue its confirmation letter, RID was surprised to hear that ADWR was waiting to receive comment from SRP on ADWR's May 20, 2015 draft confirmation letter to RID, particularly when SRP was not present at the May 19 meeting and was not involved in ADWR's issuance of its October 21, 2013 letter to RID.

After additional time had passed, you contacted me and asked if RID would have any problem with adding a final sentence to the earlier ADWR draft letter that hopefully would placate SRP. Although RID strongly objected to any involvement by SRP, after hearing ADWR's proposed final sentence over the phone, and it not being inconsistent with ADWR's statements to RID during the May 19 meeting and in ADWR's October 21, 2013 letter, RID expressed no objections to ADWR's proposed additional sentence.

Notwithstanding RID's acceptance of these two ADWR draft letters, no final ADWR letter was forthcoming. Instead, you advised me by phone that SRP objected to ADWR's two draft letters (to RID) and that SRP had drafted alternative language for ADWR's letter to RID. You recited some of the SRP alternative language over the phone, and RID strongly objected to the SRP language as it was inconsistent with ADWR's verbal clarifications at the May 19 meeting and with ADWR's own words and statements in its October 21, 2013 letter to RID and its May 20, 2015 draft confirmation letter to RID.

After the aforementioned discussion, RID submitted a public records request to ADWR regarding SRP's discussions with ADWR on RID matters, and became aware of a recent third ADWR-authored draft confirmation letter, dated June 26, 2015, that is only two sentences:

I am writing regarding the letter from the Arizona Department of Water Resources ("ADWR") to Roosevelt Irrigation District ("RID") dated May 7, 2010 and October 21, 2013 ("Letters"). This is to inform you that the Letters speak for themselves and my letter to RID and Salt River Project dated March 31, 2015 does not withdraw any statements made in those Letters.

This third ADWR draft confirmation letter, albeit short, was consistent with ADWR's verbal clarification to RID at the May 19 meeting and with the qualifications in ADWR's 2010 and 2013 letters to RID. Accordingly, RID informed you that any of the three draft confirmation letters actually authored by ADWR (and only ADWR) is acceptable to RID.

Nonetheless, it now has been over two months since ADWR committed to provide written confirmation to RID consistent with ADWR's comments at the May 19 meeting.

RID appreciates ADWR's burdensome schedule, but ADWR has authored three draft confirmation letters (the last draft confirmation letter being only two sentences) that are consistent with ADWR's verbal clarifications to RID at the May 19 meeting, and RID has confirmed to ADWR that all three draft confirmation letters are acceptable. RID sees no reason for any further delay in ADWR issuing any one of those three ADWR draft confirmation letters.

Upon your return from vacation next week, ADWR's prompt issuance of any one of those three ADWR-authored confirmation letters would be appreciated.

Please contact me if there is anything RID needs to do to facilitate the issuance of any one of those ADWR confirmation letters.

Dave

Gallagher & Kennedy

2575 E. Camelback Road, Suite 1100
Phoenix, Arizona 85016-9225
602-530-8000 | www.gknet.com

David P. Kimball III
Attorney Profile
dpk@gknet.com
602-530-8221

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EXHIBIT 3



Douglas A. Ducey
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera
Director

February 10, 2017

Via E-Mail and U.S. Mail

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jcastle@castleharlan.com

Patrick Dinkel, Vice President of Environmental
and Chief Sustainability Officer
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printed on recycled paper

February 10, 2017

Page 2 of 2

Re: Final Invitation for West Van Buren WQARF Site Regional Remedy

Dear Sir or Madam:

Notwithstanding previous communications, the State of Arizona will no longer accept delays at the West Van Buren Water Quality Assurance Revolving Fund Site (WVB Site). This letter is the final invitation for involved parties to collaborate, reach consensus, and propose a regional groundwater remedy at the WVB Site.

We invite parties to propose a consensus remedial action plan that is comprehensive and covers all activities necessary to conduct a final regional remedy for the WVB Site, including but not limited to, a commitment to secure necessary permits and approvals from the State. We also request that this occur expeditiously.

If this is not acceptable to the parties, or if parties continue to delay, the State of Arizona will request that the United States Environmental Protection Agency evaluate the WVB Site for inclusion on the National Priorities List.

Until further notice, please direct all questions to me at (602) 771-2203.

Sincerely,



Misael Cabrera, P.E.
Director

cc: Kirk Adams, Arizona Governor's Chief of Staff
Hunter Moore, Arizona Governor's Policy Advisor for Natural Resources
Anthony Young, Arizona Assistant Attorney General

EXHIBIT 4

Evaluation of Potential Future Costs at Arizona Superfund Sites

Arizona Department of Environmental Quality

January 2014

INTRODUCTION

The objective of this study was to estimate the potential future costs that may be incurred by the state of Arizona's Water Quality Assurance Revolving Fund (WQARF). WQARF funds are used, in part, to conduct investigations to determine if a release or threatened release of a hazardous substance exists; conduct remedial investigations, feasibility studies, health effect studies, and risk assessments; take remedial actions; and fund orphan shares (Arizona Revised Statutes § 49-282(E)(2)). The estimation of potential future costs to the program required the analysis of three types of sites:

- 1) Sites currently listed on the WQARF Registry that are in some stage of remedial investigation and for which a remedial action has and/or will take place in the future.
- 2) Sites in some stage of a preliminary investigation (PI) that may or may not be listed on the WQARF Registry in the future.
- 3) Sites that are being investigated or remediated under federal supervision for which the WQARF program is currently or may become responsible for all or at least some of the associated costs in the future.

The primary tasks to be accomplished as part of this project were as follows:

- Determine the probable course of action at each site, based on currently available information; and
- Estimate the potential cost over the lifetime of each site.

The parametric cost modeling software program Remedial Action Cost Engineering and Requirements (RACER) was used to estimate the potential cost at each site. The program uses a combination of user-defined, site-specific information and generic engineering solutions to estimate remediation costs from an extensive cost database. Site-specific information was gathered directly from Arizona Department of Environmental Quality (ADEQ) project managers and the WQARF program's independent consultants, as well as ADEQ Legal Support Unit Staff with knowledge of the status of PI sites. Site cost estimates for this study were initiated in October 2013 and completed over the course of approximately eight weeks.

Estimating the total cost to the WQARF program for the investigation and remediation of sites requires making certain assumptions about future activities. The primary assumptions were:

- Unless otherwise specified, the primary remedial objective considered for each site was to allow for the present and reasonably foreseeable use of all contaminated media.
- Any remedial action will take no longer than 30 years to meet all site-specific remedial objectives. Thus, all monitoring and remedial operations were limited to 30 years beyond the implementation of a given remedial action.
- For each site analyzed herein, the WQARF program may become financially responsible for the site at any time, regardless of previous actions taken by responsible parties.
- Standard remedial technologies, such as pump and treat for groundwater plume containment, were chosen (in cases where a remedial technology was not yet selected or in place) over more innovative approaches that would require more extensive investigation and field testing.

The long timeframes over which estimates were made, and the relatively large number of sites, made it impossible to account for every contingency, or to include every eventual detail of site remediation as part of these estimates. Given these limitations, the results are likely to be conservatively low. They represent approximate costs and should not be construed as equivalent to cost estimates provided by independent contractors who would be implementing the detailed work activities on each site. The following sections discuss specifics of the current study approach in greater detail.

STUDY APPROACH

Background

A report entitled "Evaluation of Risks, Costs, and Liability Alternatives for Arizona WQARF Sites" was produced in 1996 by Clean Sites West, Inc. (CSW)¹ for the Arizona Legislature pursuant to a contract with the Arizona Department of Environmental Quality. As in the current study, the 1996 report estimated the future costs associated with the remediation of sites in the WQARF program. However, the report considered a smaller set of WQARF sites (28), did not consider any PI or federal sites and used substantially different cost-estimation methods. These differences make a direct comparison of the CSW report results to those of the current study impractical. Also, a primary focus of the CSW report was to assess the impact of different potentially responsible party liability schemes on WQARF site costs. In contrast, the current study considered only the total potential costs to the WQARF program associated with hazardous waste releases.

The potential cost for any given site will be dependent on a number of factors. For example, the selection of future remedial actions and a final remedy will have a substantial effect on the total remediation cost for each site. Therefore, all available information, including input from ADEQ project managers was used to determine the most prudent course of action. The sum of money potentially recoverable from responsible parties will also affect the final cost to the WQARF program. A number of sites are expected to see at least some degree of cost recovery from responsible parties or other government agencies for actions taken by WQARF. However, due to the uncertainty in the potential magnitude of such recovery, all future actions were included in the current study and resulting cost estimate, and the potential for cost recovery was not evaluated.

Cost Estimation

Future remedial and investigative costs were estimated using the RACER software version 11.1 developed by AECOM specifically for environmental remediation and restoration projects. The software was originally developed under the direction of the U.S. Air Force for estimating environmental investigation and cleanup costs for the annual budgeting and appropriations process. The software has been subjected to a formal validation, verification, and accreditation (VV&A) process in accordance with Department of Defense Instruction 5000.61. The RACER software is intended "to provide an automated, consistent and repeatable method to estimate and document the program cost for the environmental cleanup of contaminated sites and to provide a reasonable estimate for program funding purposes consistent with the information available at the time of the estimate preparation."²

document reported an uncertainty of +/-50% for WQARF-site cost estimates¹ while the U.S. Environmental Protection Agency estimates an uncertainty of -35/+50% for cost estimates included in feasibility studies⁴. Although no attempt was made to quantify uncertainty for this current study, its uncertainty is likely to also be within these ranges and the cost estimates are thought to be conservatively low for several reasons:

- It is not possible to account for every eventual detail of remedial activities over the lifetime of a site, especially for preliminary investigation sites for which little information is known.
- When selecting future remediation strategies, standard technologies were chosen that do not require extensive bench and pilot-scale testing to determine feasibility.
- The inflation rate of 1.8% is relatively low when compared to historical inflation rates.

RESULTS

Table 4 presents a cost breakdown of estimated total cost by site, with escalation. Potential site costs are displayed in Figure 4 as a function of the type of site (WQARF, Federal or PI). Appendix B provides a more complete cost breakdown by site, site type, and phase of activity and includes an estimation of net present value.

A total of 33 sites that are currently being remediated under WQARF-program supervision were evaluated to determine future costs. The estimated median cost for site-remediation is approximately \$7.2 million. A number of factors influenced the estimation of costs including site size, contamination type, current phase of the WQARF process, and projected remedial action. As presented in Table 4, costs ranged from \$15,144 to \$139,527,680. The RACER-generated total potential cost for all WQARF sites currently listed in the Registry with escalation is \$429 million. The total estimated net present value for the WQARF sites is \$211 million.

Twelve sites were evaluated for which there is currently some federal involvement. These sites may have state lead authority or oversight, some state financial participation, and/or the potential to become a state-lead site in the future. For these "federal" sites, the only remedial actions that were included were those that may possibly be paid for by the state. Therefore, RACER cost estimates for these sites may not represent the total lifetime cost for remediation. The median potential cost to the WQARF program for these sites is approximately \$3.4 million. As presented in Table 4, costs ranged from \$60,000 to \$37,761,415. Individual site costs were dependent on many of the same factors as WQARF sites. The RACER-generated total potential cost for the "federal" sites with escalation is \$95 million. The total estimated net present value for the federal sites is \$73 million.

After careful consideration of available information, 39 sites currently in the PI stage were determined to have the potential to become WQARF sites in the future. For each of these sites, the decision process presented in Figure 1 was used to determine what PI work remains to be completed at a given site and how cost estimates for the Remedial Investigation/Feasibility Study (RI/FS) work would be made. The specific remedial actions to be modeled with RACER were chosen based on a determination of how much work has been completed to date and the type of contamination present. Information regarding

Table 4. Estimated future costs (with escalation) incurred by WQARF for each site.

Site Name	Site Category	Location	Total (w/escalation)
7th Street and Arizona Avenue	WQARF	Tucson	\$5,548,352
7th Avenue and Bethany Home Road	WQARF	Phoenix	\$4,685,581
16th Street and Camelback Road	WQARF	Phoenix	\$686,304
20th Street and Factor Avenue	WQARF	Yuma	\$12,255,175
56th Street and Earll	WQARF	Phoenix	\$8,031,101
Broadway-Pantano	WQARF	Tucson	\$60,509,751*
Central and Camelback	WQARF	Phoenix	\$2,573,483
Cooper & Commerce	WQARF	Gilbert	\$10,375,882
East Central Phoenix - 24th Street and Grand Canal	WQARF	Phoenix	\$13,982,422
East Central Phoenix - 32nd Street and Indian School	WQARF	Phoenix	\$16,227,148
East Central Phoenix - 38th Street and Indian School Road	WQARF	Phoenix	\$14,207,755
East Central Phoenix - 40th Street and Indian School Road	WQARF	Phoenix	\$14,486,490
East Central Phoenix - 40th Street and Osborn Road	WQARF	Phoenix	\$14,107,489
East Central Phoenix - 48th Street and Indian School Road	WQARF	Phoenix	\$15,375,472
Shannon Road/El Camino del Cerro	WQARF	Tucson	\$14,227,819
Estes Landfill	WQARF	Phoenix	\$590,616
Klondyke Tailings	WQARF	Klondyke	\$7,189,591
Los Reales Landfill	WQARF	Tucson	\$4,531,694
Miracle Mile	WQARF	Tucson	\$9,342,941
Park-Euclid	WQARF	Tucson	\$5,801,338
Payson PCE	WQARF	Payson	\$4,915,746
Silverbell Landfill	WQARF	Tucson	\$19,650,220
South Mesa	WQARF	Gilbert/Mesa	\$2,438,218
Tonto Drive and Cherry Street	WQARF	Payson	\$15,144
Tyson Wash	WQARF	Quartzsite	\$4,070,703
Vulture Mill	WQARF	Wickenburg	\$198,081
West Central Phoenix - East Grand Avenue	WQARF	Phoenix	\$1,551,612
West Central Phoenix - North Canal Plume	WQARF	Phoenix	\$2,194,356
West Central Phoenix - North Plume	WQARF	Phoenix	\$11,691,428
West Central Phoenix - West Grand Avenue	WQARF	Phoenix	\$36,873
West Central Phoenix - West Osborn Complex	WQARF	Phoenix	\$8,026,975
West Van Buren	WQARF	Phoenix	\$139,527,680
Western Ave Plume	WQARF	Goodyear/Avondale	\$285,979
Kachina Joray	Federal	Phoenix	\$1,504,168
Nelson Engineering	Federal	Phoenix	\$251,088
Motorola S2nd Street OU2 RI/FS	Federal	Phoenix	\$711,831
Section 9 Lease	Federal	Cameron	\$10,198,069
Tucson Rifle Club	Federal	Three Points	\$987,630

Appendix B - DRAFT
RACER Cost Estimates
Individual Cost Breakdown by Phase

Feasibility Study - Report Completion	\$60,952
Feasibility Study - PRAP & ROD	\$32,099
Design	\$88,498
Remedial Action - Pump & Treat	\$1,156,976
Feasibility Study - Vertical Aquifer Profiling	\$516,744
Long Term O&M - P&T	\$5,612,814
Long Term O&M - GW monitoring - 40 wells	\$1,063,582
Present Cost	\$9,010,842
Net Present Value	\$6,859,001
Total Cost (with escalation)	\$11,691,428

Project Name: West Central Phoenix-North Plume

Project Name: West Central Phoenix - West Grand Avenue

Location Modifier: PHOENIX, AZ

PRAP and ROD	\$23,146
Site Closeout	\$12,914
Present Cost	\$36,060
Net Present Value	\$34,961
Total Cost (with escalation)	\$36,873

Project Name: West Central Phoenix - West Grand Avenue

Project Name: West Central Phoenix - West Osborn Complex

Location Modifier: PHOENIX, AZ

Feasibility Study - PRAP and ROD	\$32,099
Design	\$60,355
Remedial Action - GW P&T	\$664,425
Operations and Maintenance - GW P&T	\$2,787,003
Long Term Monitoring	\$2,282,507
Site closeout	\$72,794
Remedial Action - Deep Monitoring Well	\$51,237
Present Cost	\$5,950,419
Net Present Value	\$4,148,729
Total Cost (with escalation)	\$8,026,975

Project Name: West Central Phoenix - West Osborn Complex

Project Name: West Van Buren

Location Modifier: PHOENIX, AZ

**Appendix B - DRAFT
RACER Cost Estimates
Individual Cost Breakdown by Phase**

Feasibility Study - Initial Report Work	\$76,200
Feasibility Study - Report Completion	\$71,195
PRAP and ROD	\$32,099
Design - Three Soil Vapor Extraction Systems	\$58,552
Remedial Action - Three Soil Vapor Extraction Systems	\$622,099
Operations and Maintenance - Three Soil Vapor Extraction Systems	\$988,388
Remedial Action - Groundwater Pump and Treat, VOC/Chrome	\$1,145,270
Remedial Action - Groundwater Pump and Treat, VOC	\$452,835
Operations and Maintenance - SVE system at Prudential (4 years)	\$286,267
Remedial Action - Roosevelt Irrigation District Wellhead Treatment - 4 systems	\$10,467,657
Design - Roosevelt Irrigation District Wellhead Treatment - 4 systems	\$271,066
Operations and Maintenance RID Wellhead Treatment - 8 systems (30 years)	\$54,299,146
Long-Term Monitoring (30 years)	\$5,111,048
Operations and Maintenance - Groundwater Pump and Treat, VOC (30 years)	\$7,836,534
Operations and Maintenance - Groundwater Pump and Treat, VOC/Chrome (30 years)	\$9,602,983
Operations and Maintenance - Groundwater Pump and Treat, VOC/Chrome (30 years)	\$9,602,983
Remedial Action - Groundwater Pump and Treat, VOC/Chrome	\$1,145,270
Remedial Action - Excavation of chrome VI-contaminated soil	\$620,782
Design - Pump and Treat Systems	\$211,406
Site Closeout	\$303,903
Present Cost	\$103,205,682
Net Present Value	\$74,565,772
Total Cost (with escalation)	\$139,527,680

Project Name: West Van Buren

Project Name: Western Avenue Plume

Feasibility Study - PRAP, ROD and Community Involvement	\$50,728
Remedial Action - MNA	\$169,725
Site Closeout	\$23,013
Present Cost	\$243,464
Net Present Value	\$204,842
Total Cost (with escalation)	\$285,979

Project Name: Western Avenue Plume

Federal Sites

Project Name: Kachina Joray

Location Modifier: PHOENIX, AZ

EXHIBIT 5



Janice K. Brewer
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • www.azdeq.gov



Henry R. Darwin
Director

OUTLINE OF TERMS FOR SETTLEMENT BETWEEN ADEQ, RID AND SETTLING PRPS

Recitals

- A. The West Van Buren Area WQARF Site is one of the largest groundwater contamination plumes in Arizona and the United States.
- B. Pursuant to A.A.C. R18-16-411(G), RID has expressed its intent to construct and operate a water treatment remedy to address certain RID wells under A.R.S. § 49-282.06(B)(4)(b) until the final remedial objectives are achieved.
- C. RID is a political subdivision of Arizona that uses, used or may use waters of the state for drinking water purposes and is seeking ADEQ matching funds pursuant to A.R.S. § 49-282(F).
- D. RID estimates that the capital and other remedial action costs to address the groundwater contamination in the West Van Buren Area WQARF Site and the operating and maintenance ("O&M") costs of the remedial actions through 2020 will total approximately \$40 million. RID estimates that there will be additional O&M costs associated with the remedial actions addressing the groundwater contamination that will be incurred after 2020. For purposes of this proposal, "Covered Costs" means: (1) the \$40 million in costs attributable to the remediation actions through 2020; and (2) future O&M costs after 2020 if, and only if, the current favorable accounting of groundwater withdrawn pursuant to an approved remedial action projects (as set forth in Laws 1997, Chapter 287, Section 52) is continued beyond 2025.
- E. RID has initiated litigation against a number of potentially responsible parties ("PRPs") in the United States District Court for District of Arizona, in case number 2:10-cv-00290-DAE-BGM (the "CERCLA Action") seeking, among other things, recovery of response costs under CERCLA § 107, 42 U.S.C. § 9607.
- F. Absent a consensual resolution, ADEQ retains authority under the Arizona WQARF and the federal CERCLA statutes to pursue enforcement and contribution actions against PRPs.
- G. ADEQ is willing to enter into an administrative settlement, consent decree or order by the Court presiding over the CERCLA Action to: (1) pay matching funds under A.R.S. § 49-282(F) in the amount set forth in paragraph 2 below; (2) provide to those PRPs who

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commit to the settlement terms outlined herein (the "Settling PRPs") a covenant not to sue and contribution and cost recovery protection from all persons with respect to the Covered Costs on the terms set forth in paragraphs 8 and 9 below.

- H. This outline sets forth proposed general terms to resolve certain of the outstanding issues through a settlement among ADEQ, RID and the Settling PRPs.

Terms of Proposed Settlement

1. RID will commit a local matching amount of \$20 million to equal the \$20 million RID is seeking from WQARF through ADEQ under A.R.S. § 49-282(F) to be used to pay for or to defray the Covered Costs.
2. ADEQ will pay matching funds under A.R.S. § 49-282(F) equal to the amount of 50% of the Covered Costs, in an amount not to exceed \$20 million, issued from the WQARF fund - provided adequate funding is available in the WQARF fund.
3. The Settling PRPs will pay an amount equal to RID's \$20 million share of the Covered Costs.
4. The Settling PRPs and RID will cooperate with ADEQ to finalize a Feasibility Study report to address the groundwater contamination in the West Van Buren Area WQARF Site that meets all applicable legal requirements in A.R.S. Title 49, Article 5 and A.A.C. R18-16-407. The Settling PRPs and RID must agree not to submit public comment on this Feasibility Study report.
5. The Settling PRPs and RID will cooperate with ADEQ to develop a Proposed Remedial Action Plan to address the groundwater contamination in the West Van Buren Area WQARF Site pursuant to A.A.C. R18-16-408. Settling PRPs and RID agree not to submit public comment on the Proposed Remedial Action Plan.
6. The Settling PRPs and RID will be provided a copy of the Record of Decision to address the groundwater contamination in the West Van Buren Area WQARF Site, but the Settling PRPs and RID agree not to submit public comment on, or appeal, the Record of Decision.
7. The Settling PRPs and RID agree not to submit public comment on, or appeal, any ADEQ settlement with other PRPs.
8. ADEQ will provide the Settling PRPs with a covenant not to sue concerning all liability to the State of Arizona under WQARF and CERCLA for recovery of the matching funds paid under A.R.S. § 49-282(F) pursuant to Paragraph 2 above.

9. ADEQ will provide the Settling PRPs with contribution and cost recovery protection from all persons with respect to the Covered Costs.
10. RID will release the Settling PRPs from liability under WQARF, CERCLA and other state laws for recovery of the Covered Costs; provided, however, that RID will retain the right to pursue any and all claims against any or all of the non-settling PRPs to recover costs associated with groundwater contamination within the West Van Buren Area WQARF Site, including CERCLA § 107 claims.

EXHIBIT 6

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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR MARICOPA COUNTY**

10 STATE OF ARIZONA, *ex rel.* MISAEEL
11 CABRERA, Director, Arizona
12 Department of Environmental Quality,

13 Plaintiff,

14 vs.

15 PALO VERDE INVESTMENTS,
L.L.C., an Arizona limited liability
16 company, SHOP VAC
CORPORATION, a New Jersey
17 corporation, and LAKE HAVASU
CITY, a municipal corporation,

18 Defendants.
19

No: CV2018-011904

**Plaintiff State's Proposed Findings of
Fact and Conclusions of Law**

(Assigned to the Hon. Teresa A. Sanders)

20 Plaintiff State proposes the following findings of fact and conclusion of law.

21 **PROPOSED FINDINGS OF FACT**

22 **The WQARF Program and Access**

23 1. The Water Quality Assurance Revolving Fund ("WQARF") Program, also known
24 as Arizona's "Superfund Program," is a comprehensive investigative and civil
25 enforcement program adopted by the Arizona legislature for identifying and holding
26

1 responsible those entities that improperly released hazardous waste into the environment.

2 A.R.S. § 49-281 *et seq.*

3 2. The Arizona Department of Environmental Quality ("ADEQ") is the designated
4 state agency for administering and enforcing the WQARF Program. A.R.S. § 49-282.

5 3. The WQARF Program's first goal is to identify, investigate, and take remedial
6 actions for releases or threatened releases of hazardous substances that have
7 contaminated or may contaminate the environment or threaten human health. A.R.S. §
8 49-287.

9 4. The WQARF Program's second goal is to investigate, identify, and take civil
10 enforcement action against parties that are responsible and liable for the contamination
11 and to recover taxpayer funds expended by the State to clean up the responsible parties'
12 contamination. A.R.S. § 49-285.

13 5. When there has been a release of a hazardous substance, the director of ADEQ
14 may elect to undertake a WQARF action. A.R.S. § 49-287(E)(4).

15 6. A WQARF action is a multi-stage process that includes: (1) investigating
16 contamination, (2) identifying the appropriate remedial action, and (3) seeking cost
17 recovery against responsible parties. A.R.S. §§ 49-287.01 – 49-287.07.

18 7. The instant case is limited to the requested relief of access, which is part of the
19 investigative stage of the WQARF enforcement process. It is not an action to establish a
20 party's proportion of liability or to recover costs; the action to determine proportional
21 liability and cost recovery occurs at a later stage in the WQARF Program. A.R.S. §§ 49-
22 287.06 – 49-287.07, *Scott Green Testimony*.

23 8. In the instant case, the State seeks access to wells to investigate the contamination,
24 evaluate the spread of contamination in the region, and obtain evidence through sampling
25 (i.e., taking groundwater samples from the wells owned or controlled by one or more of
26 the Defendants). A.R.S. § 49-288.

1 75. Scott Green also testified that ADEQ's access request was based on the fact that
2 they needed entry to determine the need for an appropriate remedial action. This type of
3 a request satisfies another enumerated circumstance, specifically A.R.S. § 49-288(C)(3).

4 76. Next, Scott Green testified numerous times that access was denied by Shop Vac,
5 Palo Verde, and Lake Havasu City to the Shop Vac wells on City and Palo Verde
6 property unless the State complied with Defendant Shop Vac's demands to use its
7 preferred sampling methodology, including use of the purging methodology, video
8 logging, and redevelopment of the wells.

9 77. Accordingly, the State proved it will likely succeed on the merits of its A.R.S. §
10 49-288(F) complaint for access.

11 78. A.R.S. § 49-288 is clear on its face and does not require, prescribe, or restrict
12 ADEQ's ability to use any sampling methodology in the course of conducting its
13 investigation and inspection of the Defendants' wells. A.R.S. § 49-288.

14 79. With that said, the Court rejects the Defendants' argument that the State had to
15 make its request after physically entering the facility and after providing appropriate
16 documentation when entry was denied. All A.R.S. § 49-288(F) requires is an access
17 request rooted in an A.R.S. § 49-288(C)(1)-(4) circumstance be made and that request be
18 denied. Defendants' arguments about reasonable time, notice, and credentials, and entry
19 all pertain to when access has already been granted, not before.

20 80. Second, the State proved a possibility of irreparable injury if the access injunction
21 is not granted. A.R.S. § 49-287(E)(2) states: "If there is a release or the threat of a
22 release of a hazardous substance which may present an imminent and substantial danger
23 to the public health or welfare or the environment[, . . . t]he attorney general may request
24 a . . . preliminary injunction . . . to protect the public health or welfare or the environment
25 from the release." (Emphasis added).

26 In the context of environmental law, "imminent and substantial danger" has a

1 specific and unique meaning. This is evident by the word “may” in the statute. “May”
2 does not require proof of “imminent and substantial danger” but rather the possibility.
3 See *U.S. v. Conservation Chemical Co.*, 619 F. Supp. 162, 184, 192 (W.D. Mont. 1985).
4 Moreover “imminent” does not mean an “emergency” nor does it mean “immediate.” *Id.*
5 at 193 (signal citing *U.S. v. Waste Industries*, 734 F.2d 159, 165 (4th Cir. 1984).
6 “Imminent” means certain factors are present that could lead to a harm even if it “may
7 not be realized for years.” *Id.* at 193-94. Similarly, substantial danger “is not actual
8 harm, but a threatened or potential harm.” *Id.* at 193.
9 Finally, the State need only demonstrate that the public health or welfare or the
10 environment may possibly be in danger. *Id.* at 192. It does not need to demonstrate the
11 possibility of danger to all three. *Id.*
12 81. The State satisfied the “imminent and substantial danger” threshold by proving the
13 release of hazardous substances such as hexavalent chromium (CrVI) and chromium (Cr),
14 which the Defendants admit occurred. (*Scott Green Testimony, Dennis Shirley*
15 *Testimony*). By its very nature, “the release of a hazardous substance may present an
16 imminent and substantial danger to the public health or welfare or the environment.”
17 That is why the substance is considered hazardous. However, the State went beyond that
18 initial threshold by demonstrating that the groundwater aquifer is contaminated and the
19 contamination plume has moved through the groundwater aquifer towards off-site wells
20 at concentrations hundreds of times above the legal limit. The legislature has designated
21 all aquifers in the State of Arizona as drinking water sources. See A.R.S. 49-224(B).
22 The fact that all aquifers are designated as drinking water sources fulfills the potential
23 danger to the public health or welfare options for meeting the imminent and substantial
24 danger element of the preliminary injunction standard. However, the environment option
25 to this element is also satisfied merely by the release of a hazardous substance and by the
26 movement and spread of that released hazardous substance into the environment.

EXHIBIT 7

Aquifer Water Quality Standards (AWQS) must be met

Plume must be contained in both the short and long term and mass flux must be a part of the proposed remedy

ADEQ will complete the WQARF process for the West Van Buren site

A Poor Quality Water Withdrawal Permit (PQWWP) will not be issued

A waiver for the municipal replenishment requirement will not be granted

A waiver for selling water outside of district boundaries will not be granted